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REPORT OF THE COMMISSION OF INQUIRY

Home Department, J&K Government
SRO. 39 Dated 30th January, 1965

THE COMMISSION OF INQUIRY

Jammu and Kashmir, Commission
= of Inquiry to inquire into
certain charges of misconduct
against Shri Bakhshi Ghulam
Mohammad

Constituted under S.R.O.—39 Dated 30th January, 1965
issued by the
HOME DEPARTMENT J & K GOVERNMENT
to inquire into
certain charges of misconduct against
SHRI BAKHSHI GHULAM MOHAMMAD

SRINAGAR
JUNE 30 1967

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INTRODUCTION

THIS REPORT will be in three parts, the first part containing a narration of the proceedings before the Commission, with an account of some of the petitions presented to it and the orders passed thereon, and the second and the third parts with the answers respectively to the first and the second questions which the Commission has been directed to inquire into and report.

2. Before, however, commencing the narration of the proceedings before the Commission, it would be convenient to make a few prefatory remarks. These proceedings fall into three distinct periods. The first which one might call the preliminary stage, was concerned with the steps taken to get before it the case of the two parties—the Government and Mr. Bakshi Ghulam Mohammad, whom on the ground of convenience I shall in this report refer as the Respondent, in the form of statements with affidavits and documents in support. This period lasted from the beginning of February 1965 to the 1st week of September of that year. During this period I held 23 sittings mostly at Srinagar. At these sittings I heard the parties as to whether a *prima facie* case had been made out, to justify calling on the respondent to answer the charges made in the several allegations, and after rejecting two of the charges contained in allegations 8 and 28, directed the respondent to file his replies to the rest of the 36 allegations. In compliance with my orders the respondent and the others to whom Notices had been given under Rule 6(1)(a) of the Rules under the Jammu & Kashmir Commission of Inquiry Act, filed replies to all the allegations except with regard to allegation 1 for which they had time till the 1st December, 1965. In the course of their replies the respondent and others referred to and called for the production of several files and documents and directions were given for their production and most of these were produced. I also disposed of during this period 43 miscellaneous petitions, these being mainly by the respondent for directing the Government to produce documents in addition to those which they themselves had produced in support of their case or for extension of time to file his replies.

3. On the 7th August, 1965, after hearing counsel on both sides, I finalised the procedure that I proposed to follow at the stage of the final hearing and the manner in which and the evidence by which facts which were in controversy between the parties could be proved. On the same date at the request of both the parties I fixed by another order, the 6th September 1965 as the date on which the final hearing in the inquiry as regards the charges into what has been referred to as the "Transport Group" was to commence. But on the 1st September, 1965 the respondent filed a petition in the State High Court for the issue of a *writ of certiorari* to quash the notification constituting the Commission as

well as its proceedings and obtained orders regarding the stay of the hearing which had been fixed to the 6th of September, 1965. With this the first period of the Commission's proceedings came to an end.

4. The second period of the Commission's life was taken up with the proceedings in the High Court. When notice of the writ petition was served on me, I filed a statement before the Court agreeing to abide by such orders as might be passed. The proceedings before the High Court lasted from September 1965 to the 27th December 1965 when the learned judges acceded to the prayers contained in the petition and quashed the notification SRO-39 of 1965 as well as the proceedings of the Commission under the said notification. From the decision of the High Court, the Government of Jammu and Kashmir took the matter in appeal to the Supreme Court after having obtained a certificate from the High Court, that the case was a fit one for appeal. The Supreme Court heard the appeal in April, 1966 and the judgement of the Court was pronounced on the 6th of May, 1966 when reversing the judgement of the High Court the writ petition of the respondent was directed to be dismissed. Thus the work of the Commission stood suspended for over nearly 9 months.

5. The third stage of the Commission's work commenced from the middle of May 1966 when I resumed the enquiry at the point where it had to be stopped. During this period I took up the final hearing as regards the several allegations set out in the notification. The respondent who during the first stage of the Commission's work appeared through several counsel and actively co-operated with me by taking part in the proceedings, filing replies to the several charges against him and by calling my attention to files and documents which were said to support his defence, refrained from participating in the inquiry during this third stage. The details of the attitude adopted by the respondent from time to time during this stage is set out in extenso in the first part of the report and is, therefore, not dealt with here. I should, however, add that it has been a matter of the greatest regret to me that the respondent should have chosen not to appear before me, thus depriving me of the assistance which I would otherwise have had from the arguments and points which his counsel might have placed before me in support of his defence though I must add that I have done everything possible to ensure that he was not prejudiced by his absence, as I believe my report would show. The efforts I took to persuade the respondent to appear before me and assist me at the final stages of the enquiry are fully set out in the order that I passed on an application by him filed after the close of the hearing and this order I have included in Annexure III to Part I.

6. During this third period which was concerned with the final hearing, the Commission sat on 84 days to hear counsel for the Government. The number of allegations on which arguments were addressed was 35, out of the 38 listed in the notification. This was because besides two of the allegations—those numbered 8 and 28—which had been rejected by me even at the preliminary stage—that numbered 13—was given up by Government during the final hearing, for the reason that the documents on which alone they could present their case, might not

be sufficient to establish the misconduct which they charged against the respondent.

7. No doubt several of the allegations consisted of a single charge, but there were quite a number which included in a single Allegation several charges. Thus Allegation 2 related to charge of coercion, intimidation and fraud practised on 40 tiller owners by which they were forced to part with their lands by coercion and undue influence for an undervalue and these owners had between themselves executed as many as 28 sale deeds. Similar was the case of Allegation 3, where as many as 45 items of property were stated to have been encroached upon. Though there were common points between the cases of the several tiller owners in Allegation 2 and between the several trespasses and encroachments in Allegation 3, the evidence in regard to each group had to be separately considered before a conclusion in regard to it could be reached. Such was the case also with Allegation 12 where there were 20 independent allotments of house sites whose propriety was called in question and Allegation 14 where really six charges were included. In Allegation 15 there were four, in Allegations 16 and 31 three and in Allegations 19 and 32 there were two each. Thus though the Allegations to be considered were only 35, in reality they were more than double that number. There were as many as 443 *affidavits* originally filed on the side of the Government besides some more filed to meet the defence case. There were nearly fifty *affidavits* filed by the defence. The number of documents filed in support of the 35 allegations which were pressed by Government were as many as 1569, though a few of them—not over 50—might have been filed in more than one allegation. What were annexed to the statements of case in respect of each allegation and are therefore included in this number were mostly photostats of certain pages from the files which consisted of letters, memoranda, noting etc. on files. These were arranged in serial order and were assigned numbers and in the *affidavits* and statements of case were referred to by those numbers, though occasionally the file numbers and their particular pages were also cited.

8. On the ground of convenience I propose to refer in the body of the report to the documents filed by the numbers assigned to them in the statement of case and in which they were arranged in the folders filed by Government in respect of each allegation. It is only in cases where it is necessary to refer to other portions of the files from which the documents have been taken, that I shall be referring to the file number. Government when filing their statements of case in respect of each allegation gathered these statements with the *affidavits* and documents on which they rested their case into separate folders and filed two sets of these folders in respect of each allegation besides serving a folder containing copies of statement of case and *affidavits* on the respondent as well as on those to whom notices were issued under Rule 6(1)(a) of the Jammu and Kashmir Commissions of Inquiry Act. I made available to the respondent one of the sets of photostat copies of documents to enable him and his counsel to peruse them even before the preliminary hearing and in cases where notices were directed to be issued to him to file his

answer, these sets of documents remained with him till he filed his replies after which alone they were returned.

9. As most of the documents included in the folders had been taken from the relevant Government files, I have had to examine the entirety of the files themselves from which these "documents" were selected, both for the reason that this was necessary to appreciate the "documents" in their proper context, but also because, the respondent in his reply in regard to several of the charges had stated that a perusal of the entire files might throw a different complexion or explain some of the documents of which copies had been included in the folders. Besides, the respondent called for in his replies the production of several files and these having been produced had to be examined by me to see if they supported the defence—a task which I had to undertake because of the absence of the respondent at the stage of the final arguments. In view of this mass of material I consider that the time taken for these hearings should be considered very short. In this connection reference should also be made to the fact that several *affidavits* filed on behalf of the Government as also the very long replies of the respondent and those supporting him had to be read out and explained, and considering this feature it must be said that the hearing was completed most expeditiously.

10. Before concluding these introductory remarks I consider that I should add a word about the procedure adopted and the materials on the basis of which I would be recording my findings on the several allegations in parts II and III of the report.

11. As would be seen from the narrative contained in Part I, the procedure which I proposed to adopt as regards the requirement of oral evidence, has been set out in an order passed and directions issued on the 7th of August, 1965 (the text of which is set out as Annexure I at the end of Part I) which I tried to explain in an order passed on the 11th July, 1966 (*vide* Annexure II) on a petition for clarification filed by the respondent. Though the Supreme Court had ruled in general terms that I was free to adopt such procedure as I considered proper and calculated to render justice to the parties, I felt that there was no need for departing from what I had laid down in my earlier directions as regards the scope of oral evidence required to be led by either party. By virtue of this ruling and this procedure laid down, if the Government desired to base their case as regards any allegation on any material other than the official files or other unimpeached documentary evidence or inferences which would necessarily be drawn from these documents, they were at liberty to lead oral evidence. The same, of course, applied to the respondent. At the hearing on the 16th August, 1966 I pointed out, that in respect of some of the charges regarding which the documentary material was placed before me, that if there was any lacuna in the documentary evidence, I would hold the charge not proved in the absence of oral evidence to substantiate what had been stated in the *affidavits* in support of the statement of the case on which reliance had been placed at the stage of the preliminary hearing. Mr. Khambata learned counsel for the Government stated

that he would consider his position and let me know if Government intended to lead oral evidence. On the 4th of September, 1966 he informed me that Government did not intend to lead oral evidence. On that I told him that he could thereafter rely only on the unimpeached documentary evidence and that I would refer to the *affidavits* filed in support of the Government case, but only for the purpose of finding out (1) if any inference which the Government claimed should be drawn from the documents was one in conformity with what was stated in the *affidavit* and (2) for finding out if there were any admissions made in them which would help the defence. All the hearings have proceeded only on this basis.

12. As the respondent did not choose to appear before me at the stage of the final hearing, I took it upon myself to put to the learned counsel for the Government the defence set up by the respondent in respect of each of the charges and desired learned counsel for the Government to examine how far the facts as disclosed by the documents were consistent with the defence raised. I also insisted on the production and examination of each one of the documents on which reliance had been placed by the respondent with a view to see how far those files or documents would help the defence or negative the case of the Government. Thus, so far as it lay in my power I put to the learned counsel for the Government the defence case and the findings I am recording in Part III of this report have been reached after this scrutiny and examination.

13. In this connection there is one observation which I consider it necessary to make. As regards very many of the allegations, the facts were not really challenged but what was in dispute was whether the benefit which undoubtedly and I should add admittedly accrued to the members of the family of the respondent or his other relations accrued to them in the normal ordinary course of business of Government activity or whether it was by virtue of any abuse of power by the respondent either in the shape of a direction by him or by the exploitation of his position with his knowledge or connivance. In reaching my findings I have taken into account the handicap I was under in that the respondent did not appear before me at the final hearing, and that I had not heard arguments of his counsel. I therefore tried my very best to understand his case as set out in his replies and elicited answers from the Government to it. Conscious as I am that this would be no substitute for arguments by his own counsel, I have exercised the utmost caution in reaching my decisions on various charges. Secondly, I have tried not to make suspicion, do duty for proof and have recorded findings of misconduct against the respondent only in those cases where the proof was overwhelming and any alternative innocent explanation, either that suggested in the replies or even otherwise was found to be untenable.

14. Under the notification dated the 30th January, 1965 the Commission was desired to make its report to the Government on or before the 31st of July, 1965. By this date the Government had just filed their statements or case, *affidavits* and documents in respect of all the allegations and the respondent had still considerable time to file his

replies in regard to several of the allegations, and naturally there was no question even of the final hearing commencing, not to speak of the conclusion of the inquiry and the report before that date. The Government, therefore, by a subsequent notification extended the time for the submission of the report to 31st of December, 1965. As would appear from what has been stated earlier the work of the Commission particularly came to an end on the filing of the writ petition in the High Court in September 1965 and the order for stay passed by the learned judges on that petition. There was, therefore, a further extension of the time for the submission of the report and this was effected by a notification issued on the 31st of December, 1965 extending the time to 30th of June, 1966. The judgement of the Supreme Court upholding the validity of the notification of the 30th January, 1965 and the legality of the constitution of the Commission together with the propriety of the proceedings of the Commission till that date, was rendered only on the 6th of May, 1966 and very little could be done by the Commission thereafter before the end of June 1966. The term of the Commission was again extended till the 31st of January, 1967. The Commission concluded its sittings on the 22nd December, 1966 and reserved orders in the inquiry on that date. As the Commission could not prepare its report before the end of January, 1967, the term of the Commission was again extended to the 31st March and thereafter again till the 30th June, 1967.

15. It would thus be seen that the preparation of the report has taken me nearly six months—from the end of December 1966 to the end of June 1967. But considering the volume of material that I had to examine and comment on, I consider this as not too long. Before concluding this preface, I should add a word of personal explanation. The report as it has emerged has become quite long, I should say longer than what I had expected or even intended. There were two principal factors which have impelled me to make it so. It would be seen that in respect of some charges I have held the same not established, while in the case of some others, I have upheld the case of the Government. Where I have held the charge proved, I considered that in view of the respondent not appearing through counsel at the stage of the arguments, I should in fairness to the respondent, deal in detail with the documents, the inferences which they were capable of yielding as well as his answer or explanation and the effect of the documents on which he relied in support of his defence. I have not, therefore, omitted to mention any single relevant fact, for or against him, in dealing with the charge. This necessarily led to the discussion getting expansive and contributing to the length. In saying this I have in mind my examination of the charges contained in Allegations 12, 29 and 31 which I could not cut short, if I had to refer to and deal with all the documents. Conversely in the case of those charges in which I have held the case of the Government not proved, I considered that, Government having conducted a preliminary investigation, gathered materials in the shape of *affidavits* and documents and the charges having been placed before me by counsel who apparently believed in them, I owed it to them, in justice, to set out in detail my reasons for not accepting their case. Here also I thought, my report should make clear that I had considered every document on which they had relied, every aspect or reasoning which was addressed

to by their counsel. I had consequently to refer to the contents and deal with the evidential value of every relevant—as distinguished from a merely formal—document, and the result is the length it has assumed. I have included a fairly detailed table of contents with a comparative table which I hope will in some measure mitigate any inconvenience which the length of this report might cause. I have besides numbering the pages, also numbered the paragraphs—which I hope would be found convenient in reading through the report. It would be noticed that while the pages have been numbered consecutively, a different mode has been adopted for the paragraphs. In regard to Parts I and II they have been numbered separately with a prefix of letters A & B to the numbers to make their identification easier. In Part III which contains the findings on the allegations set out in Schedule II of the notification I have adopted a different system. The different allegations having been arranged in a chronological and a really logical order with a view to enable the history of the fortunes of the respondent's family being traced, they have been assigned different head numbers as in American practice and the paragraphs have been treated really as sub-paras under these numbers. The table of contents which contains besides the references to the pages, the head and sub-para numbers would, I believe, assist to enable any particular item needed to be picked out easily. Besides I have added a comparative table referring to the allegations as in the notification and the pages and paragraphs of Part III where the matter is dealt with.

16. Before concluding these prefatory remarks I should be failing in my duty if I did not acknowledge the assistance I have derived from several quarters which have enabled me to complete my task. First and foremost, I must record with appreciation, what I owe to Mr. Khambata and Mr. Khanna, counsel for Government who placed before me every aspect of the Government case. By their thorough study of the files and analysis of the documents they were able to throw light on points which otherwise looked obscure or irrelevant. What particularly impressed me was the scrupulous fairness of their presentation, and conscious as they were that during the stage of the final arguments on the charges, the respondent was not appearing, they never unduly stressed any point, but on the other hand explained to me in detail the case of the respondent as set out in the replies filed. Besides they exhibited quite an amount of patience in analysing at my suggestion, the numerous documents and files which the respondent had desired to be produced and were produced so that I had the satisfaction that I had perused and examined every single document on which the respondent relied as helping his defence, as they shared with me the regret I felt in the absence of the respondent at the later stages of the inquiry. I should add that this greatly helped me to overcome the handicap I was under by reason of the respondent's failure to appear through counsel at the stage of the arguments.

17. Next, I recall with pleasure the co-operation and assistance I derived from Mr. Lok Nath Sharma, who appeared for the respondent till the 1st week of September, 1965. During this period, the respondent had filed replies to all the allegations in regard to which he had been called to answer, except to Allegation 1. During the preliminary

hearings Mr. Sharma explained to me the lacunae in the case of the Government and in some parts the case of the respondent though no formal reply had by then been filed. His extraordinarily minute and detailed study of the documents and *affidavits* filed by Government, which he placed before me at these sittings, impressed me greatly. His courtesy and patience were admirable. I was therefore greatly pained and distressed to learn of his sad demise in January, 1966 and before the commencement of the proceedings at the sitting of the Commission on the 18th May, 1966 I paid a tribute to his services to the Commission and my appreciation of them. I am quite certain, that if he had not passed away, I would have had the advantage of hearing him at the succeeding stages of the inquiry and spared the regret and disappointment I felt because of the absence of the respondent at the stage of the arguments.

18. What remains is to acknowledge what I owe to my staff who have been loyal, industrious and efficient. I obtained the services of Mr. Ailawadi from the Home Ministry of the Government of India to be my Secretary and I am happy to record that he and Mr. G. M. Thakur, as my Personal Assistant, efficiently managed the office and attended to the safety and orderliness of the numerous documents that were filed by Government. Besides, Mr. Thakur who worked as my Secretary from the beginning of January to the end of June, 1967, did his duties with commendable competence and ability, and I have derived considerable assistance from him. I also derived assistance from the other members of the staff—Mr. T. L. Kaul, Mr. P. N. Saraf and Mr. Abdul Hamid Jan—who worked as my Stenographer, Translator and Accountant. I have reserved for special mention Mr. L. R. Venaik, Stenographer, whose services were lent to the Commission by the Home Ministry, Government of India. He has done most part of the stenographic work, both during the sittings of the Commission and in the drafting of the report. He has given me loyal, ungrudging and efficient services and but for him I could not have been able to get this report ready within the time, it has now been possible. During the last stage from May, 1967 to the end of June, 1967 the services of Mr. Harbans Lal were made available to the Commission by the Home Ministry to work as a Stenographer, and he has rendered me very able and efficient service to complete this report.

19. I am forwarding along with this report the following records :—

(i) File containing the summary of the proceedings of each sitting of the Commission together with the directions and orders passed at such sitting—copies of which were circulated to the parties.

(ii) File containing the miscellaneous petitions filed by the Government and by the respondent, seeking directions in relation to several members.

(iii) File containing the orders passed on these petitions.

(iv) The Supreme Court Paper Book containing the record of the proceedings in the High Court in the petition filed by the respondent for the issue of a writ of *certiorari* to quash the Notification appointing the Commission as also the *affidavits* filed therein along with the judgement of the High Court on the writ petition.

(v) A certified copy of the judgement of the Supreme Court in the appeal by the State Government against the decision of the High Court.

(vi) The two sets of the folders filed by the Government together with the replies and statements of the respondent and others in the several allegations which the Commission was called upon to inquire.

R E P O R T

PART I

NARRATIVE OF THE PROCEEDINGS OF THE COMMISSION

FROM 1ST FEBRUARY, 1965 TO 30TH JUNE, 1967.

PART I

PROCEEDINGS OF THE COMMISSION

A—1. By a Notification published in the Jammu and Kashmir Government Gazette dated the 30th January, 1965 the Government by virtue of the powers vested in them by section 3 (i)* of the Jammu and Kashmir Commission of Inquiry Act, 1962, (which will hereafter be referred to as the Act) constituted this Commission for the purpose of inquiring into and reporting on certain matters of public importance which were specified therein. The text of this Notification as corrected by a corrigendum reads as follows :—

***Section 3. Appointment of Commission—(1)** The Government may, if it is of opinion that it is necessary so to do, and shall if a resolution in this behalf is passed by the Jammu and Kashmir State Legislative Assembly or the Jammu and Kashmir Legislative Council by notification in the Government Gazette, appoint a Commission of Inquiry for the purpose of making an inquiry into any definite matter of public importance which shall be specified in the Notification, and performing such functions being functions necessary or incidental to the inquiry and within such time as may be so specified in the notification, and the Commission so appointed shall make the inquiry and perform the functions accordingly.

M. R.

Commission of Inquiry.

GOVERNMENT OF JAMMU AND KASHMIR
HOME DEPARTMENT

NOTIFICATION

Dated the 30th January 1965

SRO-39.—WHEREAS allegation have been made against Bakhshi Ghulam Mohammed that, between October, 1947 and October, 1963, when he was holding various offices including the offices of Deputy Prime Minister and Prime Minister of the State of Jammu and Kashmir, he, by abusing the official positions held by him, obtained pecuniary and other benefits for himself, for members of his family, for his other relatives and for some other persons in whom he was interested and allowed them to obtain or connived at their obtaining pecuniary and other benefits by exploiting the official positions held by him and that thereby he, his family and his relatives made considerable additions to their assets and pecuniary resources which are at present worth about one and a half crores of rupees ;

AND WHEREAS the Government is of opinion that it is necessary to cause an inquiry to be made into the matters of public importance hereinafter specified ;

NOW, THEREFORE, in exercise of the powers conferred by section 3 of the Jammu and Kashmir Commission of Inquiry Act, 1962 (Act No. XXXII of 1962), the Government hereby appoints a Commission of Inquiry consisting of Shri N. Rajagopalan Ayyanger, Retired Judge of the Supreme Court of India, to inquire into the following matters :—

- (i) The nature and extent of the assets and pecuniary resources of Bakhshi Ghulam Mohammad and of the members of his family and his other relatives mentioned in Part 'A' of the First Schedule hereto (a) in October, 1947, and (b) in October, 1963
- (ii) Whether between October, 1947 and October, 1963 Bakhshi Ghulam Mohammad, the members of his family and his other relatives mentioned in Part 'A' of the First Schedule hereto, and the relatives of Bakhshi Ghulam Mohammad and other persons mentioned in Part 'B' of the First Schedule hereto obtained any assets, pecuniary resources or advantages or other benefits by Bakhshi Ghulam Mohammad abusing the various official positions held by him or by the aforesaid members of his family, his other relatives and persons exploiting, with his consent, knowledge or connivance, the various official positions held by him.

In making the inquiry into the matters at (ii) above the Commission shall examine only the allegations set out in the Second Schedule hereto.

2. The Commission may also perform such other functions as are necessary or incidental to the Inquiry.

3. The Commission shall make its report to the Government on or before the thirty first day of July 1965.

4. AND WHEREAS the Government is of opinion that, having regard to the nature of the inquiry to be made and other circumstances of the case, all the provisions of sub-section (2), sub-section (3), sub-section (4), sub-section (5) and sub-section (6) of section 5 of the Jammu and Kashmir Commission of Inquiry Act, 1962 (Act No. XXXII of 1962), should be made applicable to the said Commission, the Government hereby directs that all the said provisions shall apply to the said Commission.

By order of the Government of Jammu and Kashmir.

(Sd.) SYED AHMED (AGA),

Secretary to Government,
Home Department.

SCHEDULE I.

PART 'A'

Bakshi Ghulam Mohammad and family.

1. Bakshi Ghulam Mohammed S/o Bakshi Abdul Gaffar.
2. Mst. Hajra Begum W/o Bakshi Ghulam Mohammed
3. Bakshi Bashir Ahmed S/o Bakshi Ghulam Mohammed
4. Smt. Shama Mir D/o Bakshi Ghulam Mohammed W/o Mir Nassarullah.
5. Mrs. Yasmin Bakshi W/o Bakshi Bashir Ahmed.
6. Miss Lorita D/o Bakshi Bashir Ahmed.
7. Miss Sozi D/o Bakshi Bashir Ahmed.
8. Miss Anjum Ara D/o Smt. Shama Mir.
9. Miss Roshan Ara D/o Smt. Shama Mir.
10. Miss Ilfat Ara D/o Smt. Shama Mir.
11. Aman Ullah S/o Shama Mir.

Bakshi Ghulam Nabi brother of Bakshi Ghulam Mohammed and family.

12. Bakshi Ghulam Nabi S/o Bakshi Abdul Gaffar.
13. Bakshi Mohamed Yusuf S/o Bakshi Ghulam Nabi.
14. Bakshi Gulam Hassan S/o Bakshi Ghulam Nabi.
15. Bakshi Nazir Ahmed S/o Bakshi Ghulam Nabi.
16. Bakshi Abdul Qayum S/o Bakshi Ghulam Nabi.
17. Bakshi Mohd. Shaffi S/o Bakshi Ghulam Nabi.
18. Smt. Mohamooda Begum W/o Bakshi Mohammed Yusuf.

Bakshi Ali Mohammed (brother of Bakshi Ghulam Mohammed).

19. Bakshi Ali Mohammed S/o Bakshi Abdul Gaffar.

Bakshi Wali Mohammed (brother of Bakshi Ghulam Mohammed) and family.

20. Bakshi Wali Mohammed S/o Bakshi Abdul Gaffar.

21. Smt. Fatima W/o Bakshi Wali Mohammed.
22. Bakshi Zamir Ahmed S/o Bakshi Wali Mohammed.
23. Bakshi Nisar Ahmed S/o Bakshi Wali Mohammed.

*Bakshi Abdul Majid (brother of Bakshi Ghulam Mohammed).
and family*

24. Bakshi Abdul Majid S/o Bakshi Abdul Gaffar
25. Smt. Maqsooda Begum W/o Bakshi Abdul Majid.
26. Miss Amina D/o Bakshi Abdul Majid.
27. Pervez S/o Bakshi Abdul Majid.
28. Anwer Aftab S/o Bakshi Abdul Majid.
29. Munir Ahmed S/o Bakshi Abdul Majid.

*Bakshi Abdul Hamid (brother of Bakshi Ghulam Mohammed)
and family.*

30. Bakshi Abdul Hamid S/o Bakshi Abdul Gaffar.
31. Smt. Sitara Begum W/o Bakshi Abdul Hamid.
32. Smt. Raja Begum W/o Bakshi Abdul Hamid.
33. Bakshi Farooq Ahmed S/o Bakshi Abdul Hamid.
34. Bakshi Zahoor Ahmad S/o Bakshi Abdul Hamid.
35. Bakshi Faiz Ahmed S/o Bakshi Abdul Hamid.

*Bakshi Abdul Rashid (maternal cousin of Bakshi Ghulam
Mohammed) and family.*

36. Shri Abdul Rashid Bakshi S/o Qadir Khan.
37. Smt. Raja Begum W/o Abdul Rashid.
38. Mr. Ghulam Jeelani S/o Abdul Rashid.
39. Mr. Mohd Ashraf S/o Abdul Rashid.
40. Miss Zamrood D/o Abdul Rashid.
41. Miss Zarina D/o Abdul Rashid.

Bakshi Ghulam Ahmed (Maternal cousin of Bakshi Ghulam Mohammed) and family.

42. Mr. Ghulam Ahmed S/o Qadir Khan.

43. Smt. Nassira W/o Ghulam Ahmed

Bakhshi Ghulam Hussain (cousin of Bakhshi Ghulam Mohammed) and family:

44. Bakshi Ghulam Hussain S/o Bakshi Sona Ullah.

45. Smt. Aisha W/o Bakhsbi Ghulam Hussain.

46. Bakhshi Nisar Ahmed S/o Bakhshi Ghulam Hussain.

47. Bakshi Manzoor Ahmed S/o Bakshi Ghulam Hussain.

48. Bakshi Mustaffa Ahmed S/o Bakshi Ghulam Hussain

49. Bakhshi Altaf Hussain S/o Bakshi Ghulam Hussain.

SCHEDULE—I

PART 'B'

Relationship with Bakhshi Ghulam Mohammed is indicated in Brackets)

1. Mrs. Khurshid Jalalud Din D/o
Jalalud Din Ahmed .. (Wife)
2. Mir Nassarullah S/o Mir Sonaullah .. (Son-in-law).
3. Mrs. Aisha W/o Mirza Ghulam
Mustaffa .. (Sister)
4. Mirza Ghulam Mustaffa S/o Mirza
Ghulam Ahmed .. (Brother-in-law)
5. Shri Ghulam Qadir Para S/o Shri
Gani Para .. (Brother-in-law)
6. Shri Shamas Ahmed S/o Jalal-ud-Din
Ahmed .. (Brother-in-law)
7. Zaffar Ahmed S/o Jalalud Din Ahmed .. (Brother-in-law)
8. Mrs. Sugra Hafiz W/o Hafeez Akhtar .. (Sister -in-law)
9. Hafeez Akhtar .. (Wife's brother-
in-law)

10. Zahoor Ahmed S/o Agha Nizamud Din.. (Brothers son-in-law)
11. Bakhshi Ghulam Ali S/o Bakhshi Sonaulah .. (Cousin)
12. Miraj-ud-Din S/o Kh. Saif-ud-Din .. (Maternal cousin's son-in-law)
13. Ghulam Mohammed Sheikh S/o Khalil .. (Brother-in-law of Sheikh R/o Sonamasjid maternal cousin)
14. Ahmedullah Sheikh S/o Khalil Shekh .. (Brother-in-law of R/o Sonamasjid maternal cousin)
15. Ghulam Nabi Sheikh S/o Khalil Sheikh .. (Brother -in-law of maternal cousin)
16. Mst. Aisha Begum D/o Ghulam Ahmed Lone R/o Magarmal Bagh
17. Mohd Abdullah S/o Abdul Gani R/o Naushera
18. Gani Joo S/o Rasool Joo R/o Banakote Banihal
19. Ghulam Mohi-ud-Din S/o Kh: Ahsanjoo R/o Banakote Banihal
20. Abdul Reshee S/o Gani Joo R/o Banakote Banihal
21. Haji Noor-ud-din S/o Abdul Gani R/o Naushera
22. Abdul Gani S/o Noor-ud-din R/o Naushera
23. Abdul Aziz S/o Habibullah R/o Naushera
24. Ghulam Rasool S/o Ghulam Nabi R/o Naushera
25. Mohd Syed Fazili S/o Ghulam Mohi-ud-din R/o Naushera
26. Mohd Abdullah S/o Ahsan Joo R/o Banakote Banihal

SCHEDULE II

ALLEGATIONS

1. Bakhshi Ghulam Mohammed and his relatives as mentioned in Part A of the First Schedule who were persons of modest means in 1947, had by 1963 acquired vast assets and pecuniary resources valued at about Rs. one and a half crores and this process of acquisition was facilitated by the abuse by Bakhshi Ghulam Mohammed of his official positions or by the exploitation by his family and other relatives, with his consent knowledge or convenience of his official position as Deputy Prime Minister and latter as Prime Minister of the State of Jammu and Kashmir.

2. Forty tiller-owners of villages Zeethyeer and Asthal, Tehsil Srinagar, as detailed in the appendix, were coerced to sell their lands on various dates mentioned in the said appendix, in favour of Bakhshi Bashir Ahmed S/o Bakhshi Ghulam Mohammed, Bakhshi Abdul Majid brother of Bakhshi Ghulam Mohammad and Maqsooda Begum the wife of Bakhshi Abdul Majid by ignoring rules, adopting irregular methods and exercising undue pressure. Even the total sale amount mentioned in the sale deeds was not paid to the tiller-owners but a comparatively insignificant sum was paid. In these transactions Mir Nasarullah, son-in-law of Bakhshi Ghulam Mohammad, who was then posted as Deputy Commissioner, Srinagar, played a conspicuous part. When Bakhshi Ghulam Mohammad was approached in a deputation by the tiller-owners to seek remedy against the pressure exercised on them to sell their property against their will and under coercion, he refused to interfere and in fact threatened them. Bakhshi Ghulam Mohammad thus abused his official position as Prime Minister and connived at the exploitation of his position by his son, brother and his son-in-law in getting the said sales effected.

3. Land measuring 80 kanals and 19 marlas belonging to State and to private persons, situated adjacent to the land acquired by Bakhshi Bashir, Bakhshi Majid and Smt. Maqsooda in Villages Asthal and Zeethyeer (see allegation 2) was encroached upon and entries in the revenue record made in their favour.

4. Shri Ahmed Shora was coerced to sell his land situated in Village Mamal (Pahalgam), measuring 14 kanals and 3 marlas in favour of Bakhshi Ghulam Nabi, Bakhshi Abdul Majid, brothers of Bakhshi Ghulam Mohammad, and Bakhshi Bashir Ahmed S/o Bakhshi Ghulam Mohammad, by two registered sale deeds effected in 1950. This sale was effected by abuse of the official position of Bakhshi Ghulam Mohammad and by exploitation of his official position by his relatives with his connivance.

5. The area of land purchased under allegation 4 was enlarged by encroachment on 4 kanals and 17 marlas of Shamlat land, in the possession of the vendor, and 12 kanals and 10 marlas of Forest land, comprising a total area of 17 kanals and 7 marlas. This encroachment was with the knowledge, consent and connivance of Bakhshi Ghulam Mohammad. The house constructed on the said land, including the land encroached upon was later sold to the Northern Railway as the property of Bakhshi Bashir Ahmed, the son and Bakhshis Abdul Majid and Ghulam Nabi, the brothers of Bakhshi Ghulam Mohammad.

6. Kanwar Reshi Singh sold land measuring 20 kanals and 17 marlas with a house situated in Village Noonwanan (Pahalgam) by registered sale deeds dated 30-9-1958, in favour of Bakhshi Bashir Ahmed and Mrs. Shama Mir son and daughter of Bakhshi Ghulam Mohammad. 23 kanals and 5 marlas of Forest land and 4 kanals of land belonging to one Shri Banke Behari of Jammu were encroached upon and illegally added to the property purchased. The said encroachments were made by abuse of the official position of Bakhshi Ghulam Mohammad as Prime Minister of the State and by the exploitation of that position by his relatives with his connivance.

7. Shrimati S. K. Chatterjee, wife of Shri J. C. Chatterjee, owned a 3 storeyed building on a plot of land measuring 24,151 Sqr. Yds. held on lease in Sonawar, Srinagar. On her death, her daughter, Shrimati Shyama Rani Mukerjee, having not succeeded in her attempts for the renewal of the lease, was eventually forced to apply in the year 1954, through an attorney, to transfer the lease of the property to Bakhshi Ghulam Nabi brother of Bakhshi Ghulam Mohammad. The sale deed was effected on 29th Magh, 2011 (1954 A. D.) with respect to the said property for a nominal consideration of Rs. 5,000.

This sale of land was secured by exploitation of the position of Bakhshi Ghulam Mohammad as Prime Minister and with his connivance.

8. A Piece of Government land contained in Khasra No. 808 measuring 13 marlas adjacent to the property acquired by Bakhshi Ghulam Nabi, brother of Bakhshi Ghulam Mohammad from Shrimati Shyama Rani Mukerjee in Sonwar Bagh, Srinagar was encroached upon and annexed to this property without any authority or payment by exploitation of the official position of Bakhshi Ghulam Mohammad and with his connivance.

9. 6 kanals and 8 marlas of land (34,500 Sq. Ft.) were carved out of the premises of Nedous Hotel, Srinagar, which was already on lease with M/s Nedous and Sons and was given on lease for 40 years on 29-12-1960 to Shri Ghulam Jeelani, minor nephew of Bakhshi Ghulam Mohammad, at the rate of Rs. 20 per marla per annum without any premium, and in violation of the rules, at the instance of Bakhshi

Ghulam Mohammad who was then the Prime Minister of the State. The Electric Sub-Station which existed at the site was dismantled and shifted to another place at Government expense, as desired by Bakhshi Ghulam Mohammad.

10 Bakhshi Ghulam Mohammad caused undue pecuniary advantage to the tune of Rs. 30,000 to his minor nephew, Shri Ghulam Jeelani, Proprietor M/s Commercial Oil Co., by getting a piece of land situated at B. C. Road, Jammu, leased out to the latter, in violation of the rules and on an inadequate premium of Rs. 1,000 per kanal.

11. Bakhshi Ghulam Mohammad caused undue pecuniary advantage to Shri Anwar Aftab, minor son of Bakhshi Abdul Majid by getting 2 kanals of land at Bonamsar, Srinagar, leased out to him in 1961 at a fixed premium of Rs. 2,000 per kanal, in violation of the rules. The area leased out was illegally increased by the lessee by encroaching upon an area of about 12 marlas and 106 Sq. ft. of Government land.

12. There was abuse and exploitation of the official position of Bakhshi Ghulam Mohammad by himself or with his consent, knowledge or connivance by his family or other relatives in the allotment in an arbitrary and discriminating manner, of the plots noted below covered by the Low Income Group Housing Scheme :—

Gandhinagar, Jammu (during February—March, 1961)

- (1) Plots No. 34 and 35 to Bakhshi Bashir Ahmed S/o Bakhshi Ghulam Mohammad.
- (2) Plots No. 36 and 37 to Mr. Nasarullah, son-in-law of Bakhshi Ghulam Mohammad.
- (3) Plots No. 40 and 41 to Bakhshi Ghulam Nabi B/o Bakhshi Ghulam Mohammad.
- (4) Plot No. 27 to Bakhshi Abdul Majid B/o Bakhshi Ghulam Mohammad.
- (5) Plots No. 38 and 39 to Bakhshi Abdul Rashid, cousin of Bakhshi Ghulam Mohammad.
- (6) Plot No. I-B to Bakhshi Ghulam Hassain, cousin of Bakhshi Ghulam Mohammad.

Jawahir Nagar Extension and Rajbagh, Srinagar:

- (1) Plots No. 43 and 44 to Bakhshi Abdul Rashid cousin of Bakhshi Ghulam Mohammad.
- (2) Plot No. 28 to Miss Zamrooda Bakhshi D/o Bakhshi Abdul Rashid

(3) Plot No. 42 to Ghulam Jeelani S/o Bakhshi Abdul Rashid (Nephew).

(4) Plot No. 4 N. D. to Mehraj-ud-Din, son-in-law of Bakhshi Abdul Rashid (maternal cousin's son-in-law.)

In addition to the above allotments other allotments were similarly made to other relatives and persons in whom Bakhshi Ghulam Mohammad was interested, namely,—

Name	Plot No.	Location
1. Zahur Ahmed and Mrs. Zahur Ahmed.	21 N. D	Rajbagh, Srinagar.
2. Hafiz Akhtar and Sugara Hafiz	9. N. D.	do.
3. Zaffar Ahmed.	8 N. D.	do.
4. Shamas Ahmed Khan	1	Jawahir Nagar Extension, Srinagar.
5. Miss Khurshid Jalal-ud-Din (now Mrs. Bakhshi Ghulam Mahd)	2	do.
6. Ghulam Ali Bakhshi	275,276	Narsingh Garh, Srinagar.
7. Ghulam Mohammed Sheikh	383	Jawhir Nagar, Srinagar.
8. Ahmad Ullah Sheikh	384	do.
9. Ghulam Nabi Sheikh	199	Narsinghgarh, Srinagar.
10. Smt. Aisha Bagum	57	Jawahir Nagar Extension, Srinagar

13. A big house constructed over a plot of land measuring 65 kanals in Miskeen Bagh, Srinagar and which was Evacuee Property, was illegally occupied by Bakhshi Abdul Majid, brother of Bakhshi Ghulam Mohammad in the year 1948. By exploiting the official position of Bakhshi Ghulam Mohammad and with his connivance the Custodian, Evacuee Property was later on made to fix a nominal rent of Rs. 200 per month but even this nominal rent has not been paid.

14. (a) Bakhshi Ghulam Mohammad got a house in Pahalgam constructed by Shri Abdul Gani Bhat, Government contractor, who was paid only Rs. 7000 towards the construction of the building which is estimated to have cost

Rs. 87,000. He got another house constructed for himself at Ishbar-Srinagar and a third house constructed for his brother-in-law Shri Shamas Ahmad Deputy Superintendent of Police by the same contractor without due payment.

(b) Bakhshi Ghulam Mohammad got additions and alterations carried out to the house owned by Bakhshi Ghulam Nabi, Abdul Majid and Bashir Ahmed at Pahalgam through Abdul Gani Bhat, P. W. D. contractor on inadequate payment.

(c) The contractor was shown undue favours in P. W. D. and Forest contracts by Bakhshi Ghulam Mohammad or with his knowledge and connivance by the officers of the P. W. D. and Forest Departments.

15. (a) M/s Northern India Tiles Corporation, who were supplying tiles for the Srinagar Secretariat Building supplied tiles as follows for buildings in which Bakhshi Ghulam Mohammad had an interest:—

(i) 1600 in August 1961 for flooring of the Fair Deal Motor Workshop at Srinagar belonging to his son.

ii) 3,000 for the same purpose in August 1962: and

(iii) 1,500 in February 1962 for the house of Bakhshi Ghulam Mohammed's son and daughter at Pahalgam.

The total cost of the above supplies was Rs 10,365.26 P. which was not paid to the firm.

(b) Bakhshi Ghulam Mohammad in his capacity as Chairman of the Board of Governors of the Regional Engineering College, Srinagar in the year 1963, gave a contract for the supply of Nitco tiles to the above mentioned firm for the College Hostel against the rules or procedure in regard to the grant of such a contract, namely:—

(i) no tenders were invited; and

(ii) the flooring provided in the approved plan and schedule of work for the Hostel and passed by the Government of India was for cement flooring at a cost of Rs. 1 lac as against over Rs. 2 lacs involved in Nitco tiles.

16. (a) Upto the year 1957 the agency for Tata Mercedes Benz Vehicles was held throughout the J & K State by Shri C. L. Gulati, proprietor M/s National Garage, Jammu. During the year 1956-57 Bakhshi Ghulam Mohammed exercised undue pressure on both Shri C. L. Gulati and the Tata Engineering and Locomotive Company, (on the latter particularly by withholding orders from Government for the supply of their Vehicles) and thereby induced them to dividing the agency for J and K State between C. L. Gulati for Jammu Province and

Bakshi Bashir Ahmed S/o Bakshi Ghulam Mohammad for Kashmir Province.

(b) The requirement of vehicles of the Transport Department which had been kept pending for quite sometime, was taken up for consideration immediately after said bifurcation and, at the suggestion of Bakshi Ghulam Mohammad, the Transport Department made a proposal for the purchase of 100 Tata Mercedes Benz vehicles. This proposal was approved by Bakshi Ghulam Mohammad in his capacity as Transport Minister. An order for said purchase was placed with M/s Fair Deal Motors in which Bakshi Bashir Ahmed had a share and through which he was operating the above agency for the Tata Mercedes Benz Vehicles.

(c) Subsequently the order for 100 Tata Mercedes Benz vehicles mentioned at (b) above was enhanced to 120 vehicles and an advance of about Rs. 33 lacs was made to M/S Fair Deal Motors, against supplies which were delivered much later and against the provisions of rules.

(d) By means of this agency 1289 Tata Mercedes Benz vehicles were sold by the said Fair Deal Motors between 1957 and 1954, the Commission alone of which sales came to Rs. 20 lacs which accrued to the Fair Deal Motors.

(e) Bakshi Ghulam Mohammad thus by abuse of his position as Prime Minister got the agency of Tata Mercedes Benz vehicles for Kashmir Province for his son and obtained for him a lucrative and recurring business.

17. By the abuse and exploitation of the official position of Bakshi Ghulam Mohammad undue pressure was exercised on the original owners of the Firm M/S Kashmir Motors Srinagar to take in his son Bakshi Bashir, his maternal cousin Bakshi Ahmad and his nephew Ghulam Hassan as partners

18. By the abuse and exploitation of the official position of Bakshi Ghulam Mohammad Mr. P. A. Roamer, who held a contract for supplies to the Army, was induced to take in Bakshi Abdul Majid as his partner, he (P. A. Roamer) was later on forced to go out of the partnership.

19. The official position of Bakshi Ghulam Mohammed was abused and exploited in respect of the following:—

(a) Smt. Raja Begum W/o Bakshi Abdul Rashid and Bakshi Ghulam Ahmad cousin of Bakshi Ghulam Mohammad obtained the agency for the petrol pumps from Standard Vacuum Oil Company (now Esso) in Srinagar and Jammu.

(b) They also obtained the carriage contract for Esso products which they sub-let to Ch. Aishi Ram Batra for Rs 50,000 per year which was later increased to Rs. 75,000 per year.

(c) The Government Transport Department Petrol Pump at Srinagar was withdrawn from M/S Caltex who had been running it upto that time and given to Standard Vacuum Oil Company.

20. Bakshi Ghulam Mohammad by abuse of his official position secured a profitable business for his daughter-in-law by getting lease of the Nedous Hotel at Srinagar and Gulmarg held by M/S Nedous and Sons, transferred to Shri Ghulam Qadir (who had already agreed to take Mrs. Bakshi Bashir Ahmad, daughter-in law of Bakshi Ghulam Mohammad as a partner), and by getting it renewed for a period of twenty years against rules in the year 1963.

21. Out of the three Cinema houses at Srinagar, two were acquired in 1950 by Bakshi Ghulam Mohammad's brother Abdul Majid, and thereafter to eliminate competition no new Cinema was allowed to operate in Srinagar. In this manner the official position of Bakshi Ghulam Mohammad was abused and exploited for his brother's benefit.

22. Bakshi Ghulam Mohammad obtained pecuniary advantage for his son and relatives in as much as he gave orders in 1957 for an unwarranted purchase of 14 numbers of heavy Tata Mercedes Benz (L. 325/46) Chasis for the J & K Transport Department from M/S Fairdeal Motors, Srinagar, a concern owned and run by his son Bakshi Bashir and other relatives. He thereby facilitated the sale of this type of vehicles, which had no market in the State, and thereby also enabled M/s Fairdeal Motors to obtain 140 conventional type of chasis which were very much in demand and which the principals were supplying at the rate of 10 per each L 325/46 Chasis lifted by their dealers.

23. Bakshi Ghulam Mohammad obtained undue pecuniary advantage for his son Bakshi Bashir Ahmad by ordering, in December 1960, the purchase of 9 Bedford vehicles, including 7 from M/s Kashmir Motors and two from M/s Kathua Motors at a cost of Rs. 2,46,435.12 without any demand or proposal by the Transport Department, and primarily with the object of helping his son Bakshi Bashir Ahmed to acquire additional funds for running M/s Fairdeal Motors, which had fallen to his share after the partition of business within family.

24. In January, 1961, Bakshi Ghulam Mohammed obtained undue pecuniary advantage for his son and daughter, in as much as a sum of Rs. 1,00,000 was irregularly advanced at his instance by the J & K Transport Department, to Messrs Fairdeal Motors, a firm owned by his wife, son, daughter and some other near relatives.

25. In the year 1960 to 1963 by the abuse and exploitation of Bakshi Ghulam Mohammed's official position undue pecuniary advantage was secured for M/s Nav Bharat Transporters, a concern

owned by Bakshi Bashir Ahmed, his son. This firm held contract for transporting T M B vehicles from Jamshedpur to Srinagar for the Transport Department of the J & K State but the vehicles were actually delivered at Jammu through payment for delivery at Srinagar was made to the firm with the connivance of Bakshi Ghulam Mohammad.

26. Bakshi Bahir Ahmad son of Bakshi Ghulam Mohammad wanted to enter the oil transport business and had to arrange for some tankers for this purpose. His difficulty was solved by the J & K Transport Department providing him in January, 1963 three tankers in exchange for passenger vehicle chassis. This was against the normal rules and procedure, and was the result of the exploitation of the official position of Bakshi Ghulam Mohammed.

27. By the abuse and exploitation of the official position of Bakshi Ghulam Mohammad, a concern owned by his son Bakshi Bashir Ahmad (Messers New Bharat Transporters) was able, in March, 1963, to secure a contract from the Indian Oil Company for transporting their petroleum products in J & K State, inspite of the fact that previously Messrs Poonch Kashmir Transporters had given quotations, which were lower than the rates at which the contract was given to Messrs New Bharat Transporters.

28. By the abuse and exploitation of the official position of Bakshi Ghulam Mohammad undue pecuniary advantage was obtained by his brother, Bakshi Abdul Majid and other relatives, in as much as Messrs T. C. Nanda, who had secured an Army Contract for the supply of milk for Kashmir Province were harassed with a view to driving them out of the business, for which purpose, notifications were issued by the Government prohibiting the export of milk from Jammu Province to Kashmir Province.

29. By the abuse and exploitation of the official position of Bakshi Ghulam Mohammad undue pecuniary advantage was obtained by his relatives in the year 1963 in as much as M/s Fairdeal Forest Company, a concern owned by his brother Bakshi Ghulam Nabi, who had been granted a lease in Langet Forest Division, Compartment 27 Budnambal were given undue remission of Royalty of over Rs. 6 lakhs.

30. By the abuse and exploitation of the official position of Bakshi Ghulam Mohammad, his brother Bakshi Ghulam Nabi, inspite of the fact that he had backed out from the forest lease of Chirala Forest for a sum of Rs 65 lacs taken in the name of M/s Haji and Co., and should have been debarred from future contracts, was on the other hand given the lease for the same forest for Rs. 52 lacs in the name of a different firm, namely J & K Timber Traders. This was also in violation of the normal rules and practice in that the single tender of Bakshi Ghulam Nabi was accepted.

31. By the abuse and exploitation of the official position of Bakshi Ghulam Mohammad undue pecuniary advantage, to the tune of about thirteen lakhs of rupees, accrued to Messrs Ghulam Nabi Noor Din, Forest Lessees—a firm in which Haji Ghulam Nabi his brother, had a share. This was achieved through the Forest Department granting excess and undue remission of Royalty in respect of the leasing of Compartment Nos 9 Rajwar, Langet Forest Division and 53-B, 54-A and 54-B. South Lolab, Kamraj Forest Division.

32. In the year 1962 Bakshi Ghulam Mohammad by abusing his official position obtained pecuniary benefit for himself and his son to the extent of Rs. 13,561/- in as much as he got electric lines, extended to his house at Ishbar and his daughter-in-law's house at Chashma Shahi and got expenditure debited to the grant of Electrical Department although, in fact, he and his daughter-in-law were required to pay this amount.

33. By the abuse and exploitation of the official position of Bakshi Ghulam Mohammed, during the year 1959-60 pecuniary advantage was obtained by his brother Bakshi Ghulam Nabi, to the extent of Rs. 16,000/- on account of electric connection provided to Bakshi Ghulam Nabi's Saw Mill at Village Kakpora, at Government cost and against normal rules and procedure.

34. During the period 1957-63 Bakshi Ghulam Mohammad misappropriated and converted to the use of his family a Landrover (given in 1963 the provisional number J & K A 3030) purchased for Rs. 17,609.50 in March, 1957 from the Central Motors, Kashmiri Gate, Delhi out of Government funds, allotted to the "Dehat Sudhar Department" of the Government.

35. Bakshi Ghulam Mohammad abused his official position, and mis-appropriated funds, in the following transaction:—

(i) The Transport Controller was asked to submit a recommendation regarding the purchase of the car belonging to Col. Ghulam Qadir as a result of which this car was purchased on 24.11.1954.

(ii) Col. Ghulam Qadir had, at the instance of Bakshi Ghulam Mohammad, agreed to give this car as a donation for the Charar-i-Sharif Ziarat.

(iii) The payment due for the car viz. 15,000/- was received by Bakshi Ghulam Mohammad but did not find its way to either the Charar-i-Sharif funds or to Col. Ghulam Qadir. This amount was in fact misappropriated by Bakshi Ghulam Mohammad.

(iv) The Transport Department was not at the time in need of such a vehicle and did not in fact make more than nominal use of it after it was purchased.

36. Bakshi Ghulam Mohammad abused his official position by mis-appropriating contributions from the National Defence Fund, by remitting to the Central Fund only a portion of the contributions received.

37. By the abuse and exploitation of the official position of Bakshi Ghulam Mohammad, his son-in-law, Mir Nassarullah obtained undue pecuniary advantage in that he received an allotment and delivery of a Fiat car from the official quota in 1959 and did not pay for this till 1964, though he had sold the car in 1960.

38. During the period 1957-60 Bakshi Ghulam Mohammad by abuse of his official position obtained undue pecuniary advantage for himself, in as much as he obtained a credit of Rs. 2,015/- in October, 1958 against two used carpets handed over by him to the Government Arts Emporium, Srinagar against rules, and also obtained during 1958-63 irregular and excessive discounts on purchases made by him from the Emporium.

NOTE.

In all the above allegations the gravamen of the charge is that Bakshi Ghulam Mohammad abused the Official positions held by him and that the members of his family or his other relatives or other persons involved in the above allegations exploited the official positions held by Bakshi Ghulam Mohammad with his consent, knowledge or connivance, in committing the acts and concluding the transactions mentioned in the above allegations.

(Sd.) SYED AHMED (AGA),

Secretary to Government,
Home Department,

APPENDIX TO SCHEDULE II.

Relating to Allegation as S. No. 2 in the Schedule

S. No.	Name of Vendor.	Name of Vendee	Area	Location.	Date of Sale.	Price Recorded in the sale deed.	Price actually paid.
K. M.							
1	Mohd. Dar S/o Fateh Dar	Bk. Bashir Ahmed S/o Bk. Ghulam Mohammad.	4-11	Asthal.	4-5-1961	4,095	Nil
2	Nabi Dar S/o Fateh Dar						
3	Ali Dar S/o Khaliq Dar						
4	Sultan Dar S/o Khaliq Dar	Smt. Maqsooda Begum W/o Bk. Abdul Majid.	16.12	do.	18-8-1961	24,500	5,000
5	Mst. Khati W/o Khaliq Dar						
6	Gaffar Dar S/o Rehman Dar	Bk. Bashir Ahmed.	2.4	do.	4-5-1961	1,980	450
7	Subhan Dar S/o Rezak Dar						

[1-a]

S. No.	Name of Vendor.	Name of Vendee	Area. K. M.	Location.	Date of sale.	Price- corded in sale deed.	Price actually paid.
8	Khazir Dar S/o Ahmed Dar	..					
9	Ali Dar S/o Ahmed Dar	Bk. Bashir Ahmed	2 4	Asthal	4-5-1961	1,980	1000
10	Ghulam Dar S/o Ahmed Dar	..					
11	Kabir Dar S/o Qadir Dar	.. Bk. Bashir Ahmed	2.12	do.	4-5-1961	2,340	525
12	Sultan Dar S/o Rahim Dar	.. Bk. Bashir Ahmed	1.18	do.	4-5-1961	1,710	300
13	Iqbal Ghazi S/o Samad Ghazi	.. { Bk. Bashir Ahmed. [Smt. Maqsooda Begum	2.19	do.	4-5-1961	2,655	600
14	Ahmed Dar S/o Mohd. Dar	.. Bk. Bashir Ahmed	3.7	do.	16-8-1961	3,350	600
15	Mohd. Bhat S/o Amir Bhat	.. Bk. Abdul Majid.	4.9 1/2	do.	4-5-1961	4,028	800
16	Wali S/o Rasool Patnoo	.. Bk. Abdul Majid.	2.9	Zeethyeer	14-1-1963	5,000	400
		5.1 } 1.4 }		Zeethyeer	14-1-1963	13,300	1,800

[1-1]

17	Aziz Mir S/o Qadir Mir	..	Bk. Abdul Majid.	3.8	Asthal	14-1-1963	8,000	1,100
18	Rehman Khan S/o Khaliq Khan	..	Bk. Abdul Majid.	2.14	Asthal	14-1-1963	10,000	800
19	Ramzan Khan S/o	}	Smt. Maqsooda Wahab Khan	4.1	do.	16-8-1961	4,050	1,000
20	Ismail S/o Samad Dar							
21	Ahmed Sheikh S/o Qadir Sheikh	..	Smt. Maqsooda Begum.	4.0	do.	16-8-1961	6,000	1,100
22	Khuda Bhat S/o Ahmed Bhat	..	Smt. Maqsooda Begum.	8.3	do.	16-8-1961	16,300	1,500
23	Ahad Dar S/o	}	Smt. Maqsooda Begum.	{ 2.17	do.	16-8-1961	2,850	900
24	Ramzan Dar							
24	Qadir Dar S/o							
	Ramzan Dar			{ 1.6	do	16-8-1961	1,300	Nil.
25	Rehman Dar S/o Karim Dar	..	Smt. Maqsooda Begum.	4.4	do.	16-8-1961	6,300	800
26	Nabir Sheikh S/o Noor Sheikh		Smt. Maqsooda Begum	3.5	do.	16-8-1961	3,250/-	100/-
27	Mohd. Dar S/o Wahab	..	Smt. Maqsooda Begum	4.5	do.	16-8-1961	4,250/-	1,400/-
28	Salam Bughal S/o Rasool	..	Smt. Maqsooda Begum	2.1	do.	16-8-1961	2,050/-	400/-

[1 1/3]

S. No.	Name of Vendor.	Name of Vendee.	Area. K. M.	Location.	Date of sale.	Price re- corded in sale deed.	Price actually paid.
29	Wali Dar S/o Salam	} Smt. Maqsooda Begum	4.7	Asthal	16-8-1961	6,525/-	900/-
30	Ghulam Dar S/o ..						
31	Subhan Dar S/o ..						
32	Salam Dar	} Smt. Maqsooda Begum	1.13	do.	16-8-1961	3,300/-	400/-
33	Ahmed Dar S/o ..						
33	Subhan Dar						
34	Wali Dar son-in-law of Rahim Dar	} Smt. Maqsooda Begum	4.4 1.6	Asthal do.	18-8-1961 do.	9,600/- 2,600/-	1,500
35	Gani Dar S/o ..						
36	Rahim Dar						
36	Mst. Khati W/o ..	} Smt. Maqsooda Begum	5.12	do.	16-8-1961	11,200	1,700
37	Shaban Dar						
37	Ahmed Baba S/o..						
38	Ahad Baba ..	} Smt. Maqsooda Begum	3.18	do.	do.	5,850	900
38	Mohd Daga S/o ..						
39	Rasool Daga.						
39	Abdul Karim S/o..	} Smt. Maqsooda Begum.	(Sd.) SYED AHMED (AGA).	do.	do.	5,850	900
40	Aziz Jafri ..						
40	Mehda S/o Qadir..						

Secretary to Government,
Home Department.

[1-B]

GOVERNMENT OF JAMMU AND KASHMIR
HOME DEPARTMENT.

Corrigendum.

Dated Jammu the 20th February, 1965.

In the Government Notification in the Home Department No. SRO-39 Dated 30th January, 1965, the following corrections may be made:—

1. In Schedule I Part B, for the words 'Ghulam Ahmed Sheikh' appearing at Serial No. 13, please *read* 'Ghulam Mohamad Sheikh' and at Serial No. 16 for "W/o" please *read* "D/o"
2. In Schedule II (relating to allegations)—
 - (a) in allegation No. 3, for the words "belonging to private persons," please *read* "belonging to State and to private persons";
 - (b) in allegation No. 5, for the words and figures "under allegation 3", please *read* "under allegation 4";
 - (c) in allegation No. 14, for the words and figures "Rs. 45,000" please *read* "Rs. 7,000";
 - (d) in allegation No. 31, for the figures and letter "53.A" please *read* "53-B".

By order of the Government of Jammu and Kashmir.

(Sd.) SYED AHMAD AGA,

Secretary to Government,
Home Department.

A-2. I accepted the assignment on the 1st of February, 1965 and have been functioning as the Commission since then.

A-3. Immediately after I accepted the appointment, I issued notices both to Bakhshi Ghulam Mohammad (who will hereafter be referred to as the respondent) whose conduct is the primary object of this inquiry and to the State Government, who after constituting the Commission, took on themselves the duty of establishing the charges which they have set out in the Notification, regarding the first sitting of the Commission. I also issued notices regarding the date of the sitting to the several members of the family and other relatives mentioned in Part A and Part B of Schedule I of the Notification.

A-4. The first sitting of the Commission was announced to be held at Jammu on the 22nd of February, 1965. In the notices calling for this hearing, the object of the sitting was made clear. The parties were to be heard on the question of the issues to be considered by the Commission as well as the procedure to be followed by it. Mr. B. Sen senior advocate of the Supreme Court instructed by several other counsel appeared on behalf of the respondent while Mr. Khambatta along with Mr. Khanna and Mr. Dhar appeared on behalf of the State Government. At the opening of the proceedings on that day, I clarified the purpose for which the sitting was being held. I said "I wish to make it perfectly clear that the only parties (using that term in a non-technical sense) to the inquiry are on the one hand the Government, who I take it, being *prima facie* satisfied about the correctness of the allegations listed in the Notification constituting the Commission, have directed this inquiry, and Shri Bakhshi Ghulam Mohammad who as Deputy Prime Minister for some period and as Prime Minister at a later period is stated to have abused this position as such, in the manner set out in the several allegations listed in the Notification. These notices have also been issued to others under Rule 6(1)(a)* promulgated under the powers vested in the State Government under section 15* of the Act

*Section 15 Power to make rules—(1) The Government may, by notification in the Government Gazette, make rules to carry out the purposes of this Act :—

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely :—

(c) the manner in which inquiries may be held under this Act and the procedure to be followed by the Commission in respect of the proceedings before it.

*Rule 6(1) The Commission shall, as soon as may be after its appointment :—

(a) issue a summons to every person, who in its opinion should be given an opportunity of being heard in the inquiry to furnish to the Commission a statement relating to such matters as may be specified in the notice or to produce documents :

which enjoins on the Commission to issue summons "to every person who in its opinion should be given an opportunity of being heard". I then proceeded. "You will see from the form of the summons issued to these several parties that they are now being given an opportunity to be heard in the matter of setting the issues and determining the procedure to be adopted in this Inquiry. Whether they should have notice at the stage of the actual determination on the merits of the several allegations, is a matter to which I shall advert later".

A-5. The first question which I took up for consideration at this preliminary hearing, was as regards the issue of the summons contemplated and provided by Rule 6(1)(b)* inviting those members of the public who are acquainted with the subject matter of the inquiry to furnish affidavits or statements relating to such matters.

A-6. In the present case the Government had made a fairly full investigation of the several matters which were the subject matter of the various allegations. In the course of that inquiry they had recorded statements of several individuals who might be in a position to give relevant evidence regarding the subject matter of these allegations. In view of this I put it to counsel whether it would serve any purpose for the Commission to issue a summons in terms of Rule 6(1)(b) but I decided, however, to issue one in terms of that rule in view of 3 circumstances. The first was that the rule appeared to me by its language to be mandatory and not capable of being waived. Secondly Mr. Khambatta, learned counsel for the Government himself suggested that it was possible that the investigation by the Government might not be so thorough, as to preclude the possibility of there being individuals outside those contacted by them, who might be in possession of relevant information or documents and lastly I myself considered that it was possible that there might be individuals who might assist the defence of the respondent or furnish an answer to the allegations made against him. As both Mr. Sen and Mr. Khambatta agreed on the desirability and need for a summons under Rule 6(1)(b), I directed that such a summons should issue. I ascertained from the learned counsel their views as regards the manner in which the Notification should be published and in accordance with the desire expressed, the summons was published in certain daily News Papers, circulating in Jammu and Srinagar besides in the official Gazette of the State.

A-7. The next question was as regards to the venue of the sitting and the hours of sitting. As regards the venue it was agreed that it should be at Jammu during the winter when the State Government

(b) issue a summons to be published in such manner as it may deem fit, inviting all persons acquainted with the subject matter of the inquiry to give evidence or to furnish to the Commission a statement relating to such matters as may be specified in the notification.

moved here and at Srinagar during summer when the Government moved there. It was also agreed that the sitting should normally be between 10-30 A.M. and 4-30 P.M. with an hour's break at 1-0 P. M. and that I would sit on all days other than on holidays and or Saturdays. I might at this stage mention that this was followed right upto the end, except that when the Commission moved to Jammu and held sitting there in November and December, 1966, the hours of sitting were slightly altered to between 11-0 A.M. to 4-30 P.M. with an hour's break.

A-8. In view of section 9 of the Act* which left it to the Commission to decide whether the hearing should be in public or in private, considerable argument was devoted at the first sitting as to the procedure to be followed. Mr. Khambatta, learned counsel for the Government, suggested that the Government would prefer the entire proceeding to be held in public because, he said, that inquiry was being made in a matter of great public importance in which the public had a vital interest.

A-9. I then explained my views on the matter pointing out that under section 3 of the Act the inquiry could be ordered only in regard "to a matter of public importance", it would, therefore, appear *prima facie* that in the absence of any over-riding consideration, the hearing should be in public. I added "the allegations which are the subject of inquiry here are of a very serious nature and have been made against a person who occupied, till a few years back, the highest official position in the State and the Notification itself containing these allegations, has been published in the Gazette and, therefore, has attained wide publicity. The ascertainment of the truth in respect of the matters mentioned in it is of the greatest interest to the general public and that, indeed, is the reason for the appointment of the Commission. It appears to me, therefore, that it would be not merely in public interest but in the interest both of the Government which constituted this Commission, as well as of Shri Bakhshi Ghulam Mohammad himself, that the inquiry should be in public. I consider that grave allegations impugning the public conduct of such a high dignitary having been published and broadcast, he should in justice and propriety have an opportunity to publicly vindicate his conduct and

*Section 9 :—Procedure to be followed by the Commission :—The Commission shall subject to any rules that may be made in this behalf, have power to regulate its own procedure (including the fixing of places and times of its sittings and deciding whether to sit in public or in private) and may act notwithstanding the temporary absence of any member or the existence of a vacancy among the members.

character". There was another reason why, according to me, the inquiry should be in public. The Commission was by reason of the powers vested in it by section 4 and section 5 of the Act* and in the light of the

***Section 4(i)—Powers of Commission :—** The Commission shall have the powers of a civil Court, while trying a suit under the Code of Civil Procedure, Svt. 1977, in respect of the following matters, namely :—

- (a) summoning and enforcing the attendance of any person and examining him on oath ;
- (b) requiring the discovery and production of any document ;
- (c) receiving evidence on affidavit ;
- (d) requisitioning any public record or copy thereof from any court or Office ;
- (e) issuing commission for the examination of witnesses or documents ;
- (f) any other matter which may be prescribed.

Explanation :—For the purpose of enforcing the attendance of any person, the local limits of the jurisdiction of the Commission shall be throughout the State.

Section 5—Additional powers of Commission :—(1) Where the Government is of opinion that having regard to the nature of the inquiry to be made and other circumstances of the case, all or any of the provisions of sub-section (2) or sub-section (3) or sub-section (4) or sub-section (5) or sub-section (6) should be made applicable to a Commission, the Government, may by notification in the Government Gazette, direct that all or such of the said provisions as may be specified in the notification shall apply to that Commission and on the issue of such a notification, the said provisions shall apply accordingly.

(2) The Commission shall have power to require any person, subject to any privilege which may be claimed by that person under any law for the time being in force, to furnish information on such points or matters as, in the opinion of the Commission, may be useful for, or relevant to the subject matter of the inquiry and any person so required shall be bound to furnish such information.

(3) The Commission or any officer, not below the rank of a Gazetted Officer, specially authorised in this behalf by the Commission may enter any building or place where the Commission has reason to believe that any books of account or other documents relating to the subject matter of the inquiry may be found, and may seize any such books of account or documents or take extracts or copies therefrom,

protection afforded to it by section 12* enjoined to conduct the inquiry as a *quasi-judicial* authority, directing evidence to be led before it, sifting it and arriving at findings on the basis of the evidence so led and analysed. Now it appears to me that a body of that type, when called upon to inquire into and report its findings on charges of the nature referred to, this Commission should conduct its proceedings in the full view of the public.

A-10. "There is in the case of an inquiry under the Act no *lis* in the sense of a legal right of the plaintiff or a petitioner which is sought to be enforced against a defendant or respondent who resists it or of a legal obligation which a plaintiff or petitioner alleges is cast on a defendant or respondent which is denied and the court or tribunal is called upon to adjudicate on the existence or nature of the legal right or obligation with a view to its vindication or enforcement. But to conclude therefrom that there is no *lis* in any other case is to take too narrow a view of the matter. There is in the case of the reference here, posed a

subject to the provisions of section 102 and section 103 of the Code of Criminal Procedure, Svt. 1989, in so far as they may be applicable.

(4) The Commission shall be deemed to be a civil Court and when any offence as is described in section 175, section 178, section 179, section 180 or section 228 of the Jammu and Kashmir State Ranbir Penal Code, Svt. 1989, is committed in the view or presence of the Commission, the Commission may, after recording the facts constituting the offence and the statement of the accused as provided for in the Code of Criminal Procedure, Svt. 1989, forward the case to a Magistrate having jurisdiction to try the same and the Magistrate to whom any such case is forwarded shall proceed to hear the complaint against the accused as if the case had been forwarded to him under section 482 of the Code of Criminal Procedure, Svt. 1989.

(5) If any person does any act or publishes any writing which is calculated to bring the Commission or any other member thereof into disrepute or to lower its or his authority or to interfere with any lawful process of the Commission, he shall be deemed to be guilty of an offence and the Commission may, after recording the facts constituting the offence, forward the case to the Magistrate having jurisdiction to try the same for taking cognizance thereof; and the Magistrate, if he finds him guilty, may sentence him to simple imprisonment which may extend to six months or to fine which may extend to one thousand rupees, or both.

(6) Any proceeding before the Commission shall be deemed to be a judicial proceeding within the meaning of section 193 and 228 of the Jammu and Kashmir State Ranbir Penal Code, Svt. 1989.

Section 12—Protection of action taken in good faith :—No suit or other legal proceeding shall lie against in Government, the Commission or any member thereof or any person acting under the

controversy which consists of opposing claims regarding a matter of grave public importance. This involves necessarily the defining and elaborating the claims and of sifting the facts in their support and the Commission is required to record a finding on these matters in dispute. Even if this is not taken to be a *lis*, it is too close to it for all purposes as to be distinguishable from a true *lis*.

A-11. "The resolution of this controversy on the terms of the Act both by way of express provision therefor and by way of necessary implication therefrom, is to be by the adoption of judicial methods and by recourse to judicial procedure. I conceive that the essence of judicial procedure consists in at least two things. Apart from the judicial mind which is presumed, firstly that the hearing should be in the presence of both the parties, each party having the right to bear what is put forward by the other, so that it might be controverted if possible and secondly in the proceedings being in public. Exceptions to the latter rule with which I am now dealing, no doubt, exist but these are based on compelling reasons existing and founded on public policy. Tumult or disorder or a reasonable apprehension of it or where otherwise public safety or national security would be jeopardised by a public hearing and of public disclosures of matters that gravely affect such safety or security, are obvious exceptions to the general rule. Similarly when the evidence relates to matters of scandalous matters, it would be just and proper that the public should be excluded and the hearings should be in the private. But apart from these instances based on National Security, public safety, decency and morality, I consider that it should be in the interest of the parties as well as that of the public that the hearings should be open to the public.

A-12. "There is another aspect which in my view cannot also be ignored. The public have a vital interest in the matters in controversy in this inquiry. In a democracy based on adult suffrage as ours, it is the people who in ultimate analysis are the political sovereigns. They have a right to be informed of the doings of those to whom they have by their votes entrusted legal powers of the widest extent and to know precisely whether the suggestions made that these powers have been abused are true or not. This is an additional reason why I consider that an inquiry by a Commission called upon to report on the sort of questions set out in the Notification constituting this Commission should be in public, unless there is any over-riding or compelling reasons for holding the sittings in private. I then recalled the words of Lord Shaw in *Scott versus Scott* "publicity in the administration of justice is one of the surest guarantees of our liberties. . . . Where there is no publicity there is no justice. It is the keenest spur to exertion and the surest of all safeguards against improbity. It keeps the judge himself while trying under trial". Therefore, I had no desire to deprive either the public

direction either of the Government or of the Commission in respect of anything which is in good faith done, or intended to be done in pursuance of this Act or of any rules or orders made thereunder or in respect of the publication, by or under the authority of the Government or the Commission, of any report, paper or proceedings.

or the parties before me of the salutary safeguard afforded by the proceedings being in the public.

A-13. Mr. Sen while generally agreeing with my observations desired that there might be a slight modification, in that that proceedings should not be open to the public until I had decided that the allegations raised a *prima facie* case justifying calling on the respondent to enter on his defence. His argument was briefly this: that in support of the allegations set out in the Notification, the Government might place before the Commission affidavits which were believed to bring home the charges. The Commission might, however, not be satisfied on their probative value and might, therefore, hold that there was no case for the respondent to answer, in respect of a particular allegation. At that stage the issue is merely whether notice should be issued to the respondent or not and it would, therefore, not be proper that the hearing should be in public, for if ultimately the Commission was satisfied that there was no case to answer the allegation, the charges made therein would prejudice the respondent. He, therefore, suggested that the sitting at which the Commission determined whether a *prima facie* case has been made out, should be in private and that once the Commission decided that there was a case to answer, all further proceedings should be in public. I consider that this suggestion possessed merit and I accepted it and directed that subject to this reservation, the rest of the proceedings would be in public.

A-14. On this a question was naturally mooted as to whether there would be a sitting for determining whether the affidavits and the documents on which reliance would be placed in support of each of the allegations raised a *prima facie* case for the defendant to answer. It was the submission of Mr. Khambatta that it was for me to satisfy myself on this matter from the perusal of the affidavits and other materials placed before me and that if I did this, there would be no need for any portion of the inquiry being held in private at all. However, I pointed out that though under the Inquiry Act, it was for the Commission to determine whether a *prima facie* case was made out to justify the respondent being called on to answer, and that the respondent would not come into the picture until notice was issued to him to show cause, still having regard to the nature of the allegations and other attendant circumstances, I proposed to decide even this question, as to whether a *prima facie* case was made out, after hearing both the sides on the material placed before me.

A-15. I next took up the question as to the details of the procedure to be adopted in the conduct of the inquiry. I pointed out that there were two "questions" or "matters" which were required to be answered by the Commission and that I considered that it would be convenient and logical if the first of the two "questions" and the evidence in relation to it were taken up for consideration after the material in relation to the second "question" and the 37 allegations with reference to which that question had to be answered, had been considered. In view of this I stated, that I proposed to proceed in the first instance with the inquiry in relation to the second "question" and pointed out that in doing so, I would act in accordance to the directions contained in

the 2nd paragraph of that question namely "examine and take into account only the allegations contained in the second schedule".

A-16. I drew the attention of the learned counsel on both sides, to the circumstance that the allegations as notified were not drawn up with clarity and precision and that it would be proper that the real points involved in the allegation might be properly clarified before the respondent was called on to answer the charge. Mr. Sen readily agreed to this suggestion and the question was then debated as to the form which the elaboration and clarification was to take. In this connection Mr. Khambatta suggested that in respect of each of these Allegations the Government would file a "statement of the case" in the form of a pleading, setting out by adverting to the facts of the Government's exact case in relation to each Allegation and support that "statement" with reference to the affidavits which would be filed, touching the several matters which were the subject of the allegation and append to it a list of the documents which would be relied on. Mr. Sen agreed that this would be a convenient form in which the case of the Government could be stated, as this would enable the respondent to understand the nature and details of the charge and defend himself properly. This procedure was, therefore, agreed to.

A-17. As the allegations were numerous being as many as 38 and I considered that it would be more convenient and tend to better expedition if the statements, affidavits and documents in respect of all of these charges were not filed at the same time but if the allegations were to be divided into convenient groups, dealing with related subject matter, and statements, affidavits and documents pertaining to each group were filed at intervals so that the respondent could conveniently examine them and prepare his defence. This suggestion was also readily agreed to, by the learned counsel on both the sides. Mr. Khambatta thereupon classified the 37 Allegations in Schedule II starting from Allegation 2 into 8 groups, the last being a miscellaneous group, none of them having connection with any other in that group. These groups were as under :—

1. Acquisition of immovable properties by improper means. These were those comprised in Allegations 2, 4 and 7.

2. Trespass and encroachment on immovable properties belonging to the Government or to other private parties. The Allegations in this group were 3, 5, 6 and 8.

3. Leases of Government land for commercial sites for inadequate consideration. These were Allegations 9, 10 and 11.

4. Charges in relation to the improper allotment of lands to the close relations of the respondent in Gandhi Nagar at Jammu and in Rajbagh and Jawahar Nagar at Srinagar. This was Allegation 12.

5. Transport matters. These were those comprised in Allegations 16, 19, 22, to 27, 34, 35 and 37.

6. Having private buildings constructed by Government contractors to whom favours had been shown by the Government and similary electrification of buildings at public expense contrary to the rules. The relevant Allegations were those contained in items 14, 15, 32 and 33.

7. Improper dealings in respect of forest contracts by which certain relations were benefitted. These were Allegations 29,30 and 31.

8. Miscellaneous items between whom there was no connection, each being independent. These comprised Allegations 13, 17, 18, 20, 21, 28, 36 and 38.

A-18. Mr. Khambatta submitted that group 5 which comprised the "Transport matters" might be taken up first for the reason that the proof of the charges made in that group rested mainly, if not wholly, on official documents. Mr. Sen agreed and stated to me "on the procedure we are entirely satisfied."

A-19. The next question was as regards the dates before which the statements, affidavits and documents in relation to the Transport group allegations should be filed by the Government. Mr. Sen suggested that the statements and affidavits and documents should first be filed in regard to items 16, 22 to 24 and 34 and in regard to the others sometime later. As regards the date it was agreed that the statements and affidavits should be filed in regard to the four of the items just now mentioned on or before the 22nd of March, 1965 in the office of the Commission. There was also a direction that a copy of each statement and affidavit should be served on respondent's counsel as well as on the counsel for Bakhshi Bashir Ahmed whose name also figures in the several allegations.

A-20. As regards the details of the procedure and nature of the affidavits to be filed I ruled as follows :—

"There shall be a separate affidavit in respect of each item of allegation even if the same individual filed an affidavit in respect of more than one allegation. Affidavits shall ordinarily be in English and where they are in a language other than English, the affidavit shall be accompanied by a translation into English with a certificate of the Translator certifying the translation to be correct. Along with the affidavits, the Government shall also file a statement setting out in precise form the substance of the charge which the respondent is called upon to answer. Such statement shall be in the form of a pleading and shall be accompanied with the list of documents on which the Government propose to rely. Such of the documents as are in possession or power of the Government shall be filed in original along with the list, into the office of the Commission. In case it is inconvenient to file the original, a photostat copy thereof will be filed. Where these documents are in a language other than English, the Government shall also file an English translation of the said document with a certificate as indicated earlier. If privilege is claimed in respect of any portion of the document such portion shall

be stitched or otherwise pasted up as to prevent their being perused. Any claim to privilege shall be made by means of affidavits setting out the grounds on which the privilege is claimed and the affidavit shall be sworn to by a responsible officer of the State Government". I might here add that though an enormous mass of official records, some of which had been called for by the respondent have been filed in the office of the Commission, privilege has not been claimed in respect of any document or portion of any document and the respondent has been at liberty to peruse every portion of the record which has been filed in the office of the Commission).

A-21. Directions were also given for the inspection of the documents filed on behalf of the Government in respect of the allegations regarding which statements had been directed to be filed.

A-22. At the close of this preliminary hearing Mr. Sen indicated that at a later stage and on an appropriate occasion, he proposed to raise three points which he stated were somewhat of a preliminary nature. He indicated these points in these terms:—

(1) Under the Jammu and Kashmir Commission of Inquiry Act, 1962 the State Government had the powers to appoint the Commission only to inquire into and report upon "matter of public importance". His submission would be that the questions now referred to the Commission for inquiry and report did not satisfy this test. I pointed out that I would deal with the objection if and when it was raised but indicated that my tentative opinion was, that I could not legally entertain an objection to the jurisdiction of the Government to constitute the Commission.

(2) The second point was, that some of the questions which the Commission was called upon to inquire into, related to matters set out in the Union Legislative list with the result that the State Government was incompetent to direct the Commission to inquire into them and

(3) the last point related to the powers of the Government to direct an inquiry into events and matters that happened prior to 1962 when the Commission of Inquiry Act was enacted and came into force. I indicated that I would deal with these points if and when these were actually raised.

A-23. Counsel on both sides having stated that they sought no further directions from the Commission at that stage, the proceedings were adjourned to 7th of April, 1965 when I said I would consider, whether a *prima facie* case had been made out in respect of the allegations listed as items 16, 22 to 24 and 34 as regards which statements and affidavits had been directed to be filed on or before 22nd March, 1965.

A-24. In accordance with the decision taken at the first sitting of the Commission, a public notification was issued in terms of Rule 6 (1) (b) of the Commission of Inquiry Rules, summoning members of

the public as were acquainted with the matters which were the subject matter of inquiry by the Commission under the Notification dated 30-1-1965 to file affidavits in regard to matters within their knowledge. The summons was in Urdu and was directed to be published in the following three Dailies published at Srinagar namely the 'Khidmat', the 'Martand' and the 'Aftab' and in the following two Dailies published at Jammu, the "Ujalla" and the "Sandesh". It was also directed to be published in the Urdu Section of the State Gazette with an English translation in the English Gazette of the State. Separate affidavits were directed to be filed in respect of each of the charges. The affidavits were to be verified by affirming the contents of the paragraphs specified as being true to the knowledge of the deponent or that the information was believed to be true being based on some document or other material which was referred to. The copies of the Notification dated 30-1-1965 constituting the Commission and containing the allegations which were the subject of inquiry as well as an Urdu translation thereof were directed to be made available for inspection at the office of the Commission by any member of the public from and after the 2nd of March, 1965. The affidavits were directed to be filed in the office of the Commission on or before 29-3-1965.

A-25. The short hand transcript of the proceedings of the Commission dated 22-2-1965 as well as a summary of the directions given by the Commission at that sitting was circulated to both the parties for their information and perusal.

A. 26. Pausing here, I should add that I had a summary of the proceedings of every sitting upto the 15th of June, 1966 drawn up including in it all the directions given in respect of the several matters mentioned and argued before me and had a copy of the same circulated to both the Government as well as the respondent as soon as possible after each sitting. I did this to enable the parties to have an authentic record of what transpired at these sittings and of the orders passed. This practice was stopped from 15-6-1966 because from then on I heard the final arguments on the several allegations. The file in the office of the Commission of these proceedings, copies of which were served on the parties is forwarded to the Government alongwith this report. Besides there were as may as 66 petitions which were filed during the course of the inquiry. Orders on them were passed, some by dictation at the sittings and some at home—but in either case, copies of these orders were immediately served on both sides, so as to avoid the inconvenience and delay which would be caused by the parties having to apply for them. The file of these petitions as well as that containing the orders passed on these petitions is similarly being forwarded.

A-27. In accordance with the directions given to the Government, statements of the case, affidavits and documents in respect of 5 Allegations—16, 22 to 24 and 34 were filed in the office of the Commission with copies of the statement and affidavit being served on the respondent and his son Bakhshi Bashir Ahmed.

A-28. The next sitting of the Commission was held at Jammu on 7th of April, 1965 which I stated earlier, was primarily for the

purpose of determining in the presence of the parties whether the statement of the case, in the light of the affidavits and documents relied on in support raised a *prima facie* case, justifying the calling upon the respondent to furnish an answer to the charge contained in the 5 allegations.

A-29. Just as the sitting was commencing, the learned counsel for the respondent filed two applications supported by affidavits to which a reference will be made a little later. Mr. Sharma, the learned counsel complained that he had not been furnished with copies of the affidavits which had been filed on behalf of the public to enable him to know whether there was anything in them which went against him or in his favour. I then pointed out that I had all these affidavits which were in Urdu translated for my benefit and I found that there was nothing in any of them which related to any of the charges which were subject matter of the inquiry. They were mostly directed against Bakhshi Abdul Majid and voiced a complaint that large sums of money were due to the deponents from Bakhshi Abdul Majid for goods supplied to him, for the fulfilment of his contracts with the army authorities and that he had not made payments to them. In some of them it was said that these payments were not made because of the influence of the respondent. But in as much as the matters of complaint were not the subject matter of any of the Allegations listed in Schedule 2 and as the Commission was directed by the second paragraph of question 2 to confine itself to the allegations listed in the Notification, I did not propose to take any notice of the contents of any of these affidavits. I also pointed out that there was nothing in them which could possibly help the respondent. I, however, made it clear that if the counsel for the respondent desired to peruse them they were always at liberty to do so.

A-30. When next I took up the question of the statement of case etc. filed in respect of the five allegations in regard to which Government had filed affidavits etc. Mr. Sen raised two points. The first was that before the defence was called upon to make any submission whether a *prima facie* case was made out or not, the respondent should be permitted to have inspection of the entire files from which certain documents had been picked out by the Government as being relevant to the allegations. The question in this form was raised because Government had along with the statement of the case and affidavits, filed photostat copies of the pages of the files which contained matter relevant to the charge and which in their opinion established their case. The submission of Mr. Sen was that a perusal of these photostat copies which alone were made available to them for inspection was not sufficient that they should have access to the entire record which had been filed in the office of the Commission before they should be called upon to make any submission even at this stage. The second point which he made that as Government were relying on statements and affidavits filed by them in support of their case, it was necessary that the deponents of these affidavits should be called up before the tribunal and be subjected to cross-examination by the respondent, before their statements could be accepted and a *prima facie* case held to be established.

A-31. Taking the second point first Mr. Khambatta rightly pointed out that the present hearing was not for the purpose of considering whether the charges were fully proved but only whether the allegations made in the statement of case supported by the affidavits and documents filed, justified the Commission in directing the respondent to file his answer. I agreed with this view and pointed out that the defence had to proceed on the basis that the facts stated in the affidavits filed as well as in the documents relied on were for the time being true. The only objection which I would entertain at this stage would be somewhat in the nature of a demurrer. In other words assuming the facts in the statement of the case, supported by the affidavits and documents were true, is a *prima facie* case made out. Of course it would be open to the respondent to urge that the statement of the case went beyond the charge in the Allegation as notified, in which event of course there would be no question of his being called upon to answer the excess. Similarly if there was any material variation between the 'statement' and the 'Allegation' as notified it would be open to the respondent to object to this variation. Also if the affidavits and documents did not, even if accepted, establish the notified charge against the respondent an objection could be raised at this preliminary stage and no notice would be issued calling upon him to answer that charge. The point was that the veracity of the deponents was not the subject-matter of inquiry at this stage but would be a matter that would be considered only at the stage of the final hearing.

A-32. The other point raised was as regards the right of the respondent to inspect the entire files and documents filed in the office of the Commission before he was called upon to address the Commission as regards whether a *prima facie* case was disclosed by the statements, affidavits etc. filed by the Government and of course before he was called upon to reply to the charge. In regard to this the main submission of Mr. Sen was that the respondent could not be expected to remember the particulars as regards to the various orders passed by him and as these were taken out of the context in the documents which the Government had picked out and included in the folders and Government relied upon them, it would not be fair to require the respondent to answer the charge without his having access to the entire files. Mr. Khambatta, however, urged that if the inspection of the entire files were to take place before the replies were to be filed, it would lead to considerable delay in the filing of the replies and such a roving inspection was not necessary in the interest of fairness and justice. I then asked Mr. Sen counsel for the respondent whether the point that he sought to raise was, that other portions of the file might contain a contradiction of the case made against the respondent by the documents selected or might furnish an answer to the charge made. Mr. Sen said that this was so and he thereupon suggested that he would be satisfied if the entire files and documents from which extracts have been included were left with the Commission and I examined these records and satisfied myself whether they contained nothing or material which would, alter or modify the charge or materially afford a defence to the respondent. I am mentioning this in detail because the alleged denial of the right of inspection of documents filed by the Government was one of the points on which counsel for the respondent strongly relied during the course of writ petition in the High Court and on appeal to the Supreme Court. What I

desire to point out is that it was learned counsel for the respondent who himself suggested that he would be satisfied with my inspection of the entire record and with my circulating to the parties any document or a portion of the document which helped the defence. I now quote from the verbatim report of the proceedings of the 7th April, 1965 where Mr. Sen addressing the Commission said "the files may be placed before the Commission. The Commission may look into these files and if the Commission finds that any portion of the files which bears upon the matters had been left out I may be given copies of such papers.

Mr. Khambatta:- I agree to the course suggested as that would eliminate wastage of unnecessary time.

Commission :- The files may be sent on to me. I will go through all of them. If there is anything in them, besides the documents already filed which bears upon this matter or throws any light thereon by way of elaborating the defence I shall have copies made out of those portions and have them circulated to both the parties before the preliminary hearing is held. At a later stage the respondent will have the opportunity of inspecting entirely all these files so that he might be able to pick up and put to use anything which might have escaped my attention.

Mr. Sen :— In view of what has been agreed to I would suggest that my learned friends should file a statement in respect of these 6 remaining items of this group within a fortnight and if in the meantime your lordship looks into these files and if your lordship thinks that anything has been left out of these files the Secretary may be directed to give us extracts of such portions.

Commission:— I will see that copies of such pages are circulated to both the sides".

A-33. Mr. Khambatta suggested that he would file statements, affidavits and documents in relation to other items of the Transport group on or before 22nd of April, 1965 which I considered reasonable and this was agreed to. Mr. Sen thereafter suggested that as each of the allegations in the Transport group was connected with the other, it would be more convenient if the *prima facie* case disclosed in respect of the 6 items as regards which statements etc. had been filed by the Government, be taken up at the stage of the preliminary hearing in regard to the other 6 items of this group. The suggestion appeared reasonable and I directed that the preliminary hearing of all the items in the Transport group would be taken up at the next hearing which would be at Srinagar.

A-34. Thereafter both Mr. Sharma appearing on behalf of Bakhshi Bashir Ahmed and Mr. Sen brought to my notice that the Police who were instructing counsel for the Government in the inquiry before me were proceeding with their own investigation into the charges which were the subject matter of inquiry before the Commission and that it was both embarrassing and inconvenient to have these parallel proceedings being pursued at the same time. In regard to this matter Mr. Sen drew my attention besides to the documents already produced in relation to the allegations in the Transport group, in which there was a reference to "P E No. 4 of 1964" etc. and also that in these "preliminary cases" conducted by the Police, warrants had been obtained from Magistrates on the strength of which certain documents had been seized. I pointed out that if there was a case pending against the respondent and if the same was being pursued either before a Magistrate or other authority it would be embarrassing and difficult for the defence to properly conduct their case in the present inquiry. As I desired to have a statement regarding the factual position Mr. Khambatta agreed that he would file a formal statement in this respect. The Government was directed to file such a statement before the next hearing.

A-35. Before I adjourned the sitting at 1 o'clock Mr. Sen submitted that he would argue the preliminary objection about the Jammu and Kashmir Commission of Inquiry Act, 1962 not being retrospective and that in consequence it was not competent for the Government to refer to the Commission any matter which transpired before the passing of that enactment and that I had consequently no jurisdiction to inquire into or submit a report on such antecedent matters. I agreed that this was the proper stage at which this preliminary objection ought to be raised. I further ruled that the hearing of the preliminary objection would not be in camera but in public, and this was agreed to. Five minutes before 2-0 P.M., however, Mr. Sen came to my Chambers and intimated that he had been instructed not to press the point at that stage and not to argue the objection. The public sitting was not, therefore, held.

A-36. When the sitting was resumed after the lunch break Mr. Sen complained that inspecting the documents and photostat copies filed by the Government in the office of the Commission and taking notes of them there was very inconvenient as they had to get a number of stenographers for making these notes. As the Government found that owing to shortage of sensitive paper they could not make any more copies of the documents for being handed over to the respondent, I agreed to hand-over one of the two sets of the documents filed for my use to the respondent for perusal and return. This was agreed to by both the sides. As the request of both the parties who consulted between themselves their convenience in the matter, 10th of May was agreed to as the convenient date for the next sitting which would be held at Srinagar to which place the Government would move by that time.

A-37. On the 30th of April, 1965, the Government filed the following statement signed by counsel in answer to the parallel

proceedings by the Police before Magistrates regarding which the respondent had complained.

"The following statement is being filed in compliance with the directions of the Hon'ble Commission issued at its sitting on 7-4-1965 and in confirmation of the submissions therein made to the Commission by counsel for the Government.

Certain complaints regarding abuse or misuse of power on the part of Bakhshi Ghulam Mohammad, former Prime Minister of the Government of Jammu and Kashmir by reason whereof he and certain of his close relations were improperly benefited, were received by the Government. Thereupon the Government directed the D.I.G. (CID) to verify the truth in these complaints and to report the result to the Government. Besides, the D.I.G. (CID) himself received information from other sources involving acts of misconduct by Bakhshi Ghulam Mohammad of a similar nature. As these allegations had been received by the CID from diverse sources, they decided to have a preliminary enquiry made to ascertain their truth and also as to the material available or likely to be available in support of these allegations. For facility of reference and record and to enable supervision over these enquiries which were entrusted to a number of different officers serial numbers were allotted to these enquiries. That is why certain P. E. or case Nos. have appeared in some of the documents which have been placed before the Commission.

The material collected as a result of these preliminary enquiries was placed before the Government for their consideration. The Government after satisfying itself about their *prima facie* truth and sustainability appointed the Commission for inquiring into the several charges listed in the Notification. It has only to be added that after the appointment of the Commission the Criminal Investigation Department is assisting the Government in placing the case before the Commission and for that purpose is collecting the available material.

I am instructed to state that as a result of the preliminary enquiries conducted by the C.I.D. no criminal case has been registered against Bakhshi Ghulam Mohammad, and no charges have been laid before any Magistrate or other authority by the Police and that no criminal proceedings are now pending in any Court of Law. The Land Rover to which allegation No. 34 relates was seized under section 550 of the Criminal Procedure Code but even there no complaints or case was registered in respect of that vehicle.

In view of this I am instructed to state that no proceedings—civil or criminal—have been instituted by the Government against Bakhshi Ghulam Mohammad or anyone

of the parties listed in Part A of Schedule I of the Notification constituting the Commission in respect of any matter which is the subject matter of Inquiry by the Commission and in consequence there are no parallel proceedings—civil or criminal—pending against them”.

A-38. After this statement filed there was no complaint by the respondent of any embarrassment or inconvenience caused to him by parallel proceedings.

A-39. The next sitting of the Commission was held as directed on the 10th of May, 1965 at Srinagar. Mr. Sen again submitted that the expression “*prima facie* case” was ambiguous and that I should clarify it. I reiterated what I had already stated at the previous hearing. I explained that I had before me, when considering the point, not merely the statement of the case in respect of each allegation or charge which would be in the nature of a pleading merely but that the same was accompanied by affidavits and backed by documentary evidence in support of the facts stated in the affidavits and statements. The statements which were merely an expanded version of the several allegations were no evidence and by themselves might not raise any *prima facie* case justifying calling upon the respondent to furnish an answer. The affidavits which were on oath or solemn affirmation and the documents filed were, however, of a different category. They were evidence and in the absence of denial or adequate answer supported by acceptable evidence I would be entitled to rest my findings on them. The statements in the affidavits, however, not having been tested by cross-examination there was a possibility of their being untrue or incorrect. I had made it clear that deponents of the affidavits need not as a matter of law or as a matter of course be required to be subjected to cross-examination (nor can the respondent claim this as a matter of right) for it is manifestly open to me to proceed on the evidence afforded by affidavits and documents. The question whether the deponents of these documents have to be subjected to cross-examination would depend upon the nature of the defence as well as the material submitted in support thereof. If the answers furnished by the statements which are now being directed to be filed, raise any serious doubts as to the truth of the contents of the affidavits, I would certainly require the deponents to be examined orally and subject them to cross-examination. It is because of this possibility that I had been stating that the respondent must accept as true the statements in the affidavits at this stage. The same thing applied to the documentary evidence because in their case also if other documents were produced or other material brought up which would throw a different complexion upon the several transactions which are the subject of inquiry, the inference to be drawn from the documents now placed before me, would have to be modified or even disregarded.

A-40. It is in this context that I observed that the directions regarding the objections open to the respondent at this stage had to be understood. If the statement of the case went beyond the allegations as notified, objection could be raised to the excess or the addition, because the Commission is by the Notification itself not entitled to travel beyond

the 38 allegations set out in it. Again if neither the affidavits nor the documents filed in support of the statement in respect of any allegation make out the charge, it will be open to the respondent to urge at the preliminary stage that he should not be called upon to answer that charge or portion of the charge regarding which there is no material placed before the Commission. Again if the documents filed in support of an allegation contradict the allegations in the statement or the facts stated in the affidavits or are clearly not capable of the construction sought to be put upon them in the statements or affidavits, the respondent could legitimately raise an objection at this stage, that he should not be called on to answer matters which the documents produced by the Government themselves negative. These exhaust the objections open at this stage.

A-41. After this clarification, counsel for the respondent was directed to place before me any "preliminary objection" they might have to the respondent being called upon to answer the charge set out in the 11 allegations of the Transport group regarding which statements etc. had been filed.

A-42. Mr. Sen then submitted that he proposed to argue the preliminary point regarding the competence of the Commission to inquire into matters which transpired before the date when the Act was passed and came into force. But having stated this, he expressed his desire to reserve this point to the stage of the final arguments when the merits of the several charges would be discussed. I, however, pointed out that I would not permit him to raise the point after the inquiry was completed and at the stage of arguments, because if the point had substance and was upheld it would mean that the time of the Commission had been wasted and such portion of the inquiry which related to matters which happened before 1962 would be a futility. I, therefore, ruled that if Mr. Sen desired to raise the point, he could do so only now before he was called on to answer the charges and that he would not be permitted to do so, at a later stage.

A-43. Mr. Sen, however, stated that the authorities on which he would be relying for the purpose of his making the point, were not then available to him and wanted some further time before he would argue the matter. The proceeding was then adjourned to the next day—11-5-1965—to suit the convenience of counsel. When the sitting commenced I called upon Mr. Sen to argue the preliminary objection. He, however, submitted that he was still handicapped by not having been able to procure the text books and authorities needed for his argument and besides he said that he had one further difficulty in his making his submission. This was that I had already ruled that I would not entertain any argument or objection that the "matters" referred to the Commission for inquiry and report were not "matters of public importance" within section 3 of the Jammu and Kashmir Inquiry Commission Act, 1962. He said that in view of this attitude of mine, he could not usefully or effectively make adequate submissions regarding his point about the Act not being retrospective in the sense submitted.

As Mr. Sen desired to have a formal ruling on the matter in relation to this objection I dictated the following order :—

“Mr. Sen submitted that having regard to the ruling of the Commission at an earlier sitting it would not entertain any objection to the competence of the reference of the Commission on the ground that the questions referred to it by the Notification were not matters of public importance, he was not in a position to argue the preliminary objection that facts which transpired prior to the enactment of the Act, 1962 could not be gone into by this Commission as he could not separate the two points and he would not raise this preliminary objection before the Commission and the Commission added that it would not entertain any such objection at a later stage”.

A-44. Mr. Sen was called upon to deal with any objection that he might have to notice being issued to the respondent to reply to the charges contained in the allegations in the “Transport group”. Mr. Sen raised certain preliminary objections. His first objection was that the statement of the case filed on behalf of the Government was not verified in the manner required by rule 15 of Order 6 of the Civil Procedure Code, and as these statements were unverified the respondent could not be called upon to answer them. I, however, pointed out that there was no statutory rule requiring these statements to be verified. No doubt it had been stated at the earlier hearing that these statements would be in the nature of a “pleading” but the word “pleading” was used in a loose sense and was not intended to bring in all the technicalities or requirements of a “pleading” under the Code of Civil Procedure. Primarily the respondent had to answer the charges contained in the allegations as notified but some of the allegations as drafted were somewhat cryptic and not sufficiently explicit as regards the case which the Government intended to prove. This was a matter which was brought to my attention even at the first sitting. When at that sitting this was pointed out, Mr. Khambatta learned counsel had agreed to file statements with clarity which the respondent might be required to answer. The statement of the case was, therefore, intended to give the respondent a clearer and an unambiguous idea of the case which he had to meet and it was with that intention that I directed these statement be filed. I further made it clear that I was not treating the “statement” as evidence but merely as clarifying the allegations as notified and as putting in a connected narrative form the salient facts disclosed by the accompanying documents and affidavits filed in support. In view of the nature and purpose of these statements, it was no objection to their being entertained that they were not verified. I, therefore, rejected this “preliminary objection”.

A-45. Mr. Sen’s alternative submission which he made thereafter was reasonable and this was that as the Government had been permitted to file unverified statements, the respondent on his part should also be at liberty to file such unverified statements as his answer. This was perfectly a reasonable proposal to which Mr. Khambatta immediately agreed.

A-46. The next submission of Mr. Sen was that the statement of the case in respect of allegations 16, 26 and 27 went beyond the allegations as notified and I dealt with them accepting some of the objections.

A-47. These concluded the preliminary objections raised by Mr. Sen as regards the justification for the respondent being called on to answer the charges in relation to the Transport group. There was one matter in relation to Allegation 37 to which it is now necessary to advert. In accordance with the assurance I gave that I would myself examine the files and documents filed in the office of the Commission and circulate to the parties such of the documents as in my opinion would help the defence, I circulated before this hearing extracts from certain documents in relation to Allegation No. 37. This matter was taken up at the next sitting on 14th of May, 1965 when after having heard counsel on both the sides, I ruled that the affidavits and documents filed in respect of all the items in the Transport group raised a *prima facie* case justifying calling upon the respondent to file his answer.

A-48. I also gave directions as regards the dates on or before which statements, affidavits and documents in relation to Allegations 9, 10, 11, 12, 13, 14, 15, 17, 18, 20, 21, 28, 29, 30, 31, 32, 33, 36 and 38 should be filed. I further directed that the respondent (as well as those to whom the notices had been given under Rule 6 (1) (a)) would have six weeks from that day to file their statements in reply. There were sittings of the Commission on 14th and 17th of May, 1965 but as these are not very relevant for this narration, I am not setting them out.

A-49. At the next sitting of the Commission which was held on 21st of May, 1965 counsel on both sides were heard as regards the existence of *prima facie* case in regard to Allegations 9 and 20 and holding that a *prima facie* case had been established I called upon the respondent to submit his answer. The preliminary hearing as regards Allegations 10 and 11 was taken up at the sitting of 24th of May, 1965 when having heard the counsel on both the sides I directed notice to issue to the respondent to file his answer to Allegation 10 reserving for further consideration the question as regards notice in relation to Allegation 11. This last one was taken up at the sitting of 31st of May, 1965 when after hearing the learned counsel on both the sides and certain supplementary affidavits and statements filed by the Government, I directed notice to be issued to the respondent calling upon him to answer the Allegation. However, in view of certain objections raised I considered that paragraphs 10 and 11 of the case contained matter not covered by the Allegation as notified and, therefore, that the respondent was not called upon to answer those statements contained in those paragraphs.

A-50. At this sitting I also took up for consideration the statements, affidavits and documents filed by the Government in relation to Allegation 15. Objections were raised by Mr. Sharma, learned counsel for the respondent, that the charge contained in Allegation 15 (b) was beyond the competence of the Commission for the reason that the Regional Engineering College, Srinagar was an institution whose control vested in the Union Government under item 65 list 1 of the Constitution and that the entering into a contract for the construction of the College

and Hostel or any misconduct in relation thereto was a matter within the exclusive jurisdiction of the Union Government. I observed that assuming there was substance in this plea I should have more facts before me particularly in relation to the precise relationship between the State and the Union Government, in relation to the institution, more especially to the construction of the building and the exact position of Bakhshi Ghulam Mohammad in relation to the governing body. In this view I intimated that I did not propose to hear arguments or decide this preliminary objection at this stage and that it would be considered more appropriately and properly dealt with after respondent filed his reply to the charge. It, therefore, reserved the right of the respondent to raise the point at the stage of the final inquiry and subject to this reservation the respondent was called on to answer the charges containing in paragraphs 15(a) and (b) of the Allegation.

A-51. Allegations 32, 33 and 38 were next taken up. While orders were passed directing a reply to be filed to the charge contained in Allegation 32, the consideration of allegation 33 was adjourned in view of the submission of the learned counsel that Bakhshi Ghulam Nabi who was alleged to have been improperly benefited in this Allegation, was then in preventive detention and counsel was unable to make any submissions without contacting him and obtaining his instructions. The hearing of this Allegation was, therefore, adjourned for the purpose of counsel meeting the detenu and taking instructions. Mr. Khambatta learned counsel for the Government stated that he would be able to persuade the Government to accord permission to counsel to meet the detenu and obtain his instructions. The Commission expressed the hope that the Government would allow facilities to the counsel to meet Bakhshi Ghulam Nabi and interview him outside the hearing of the Police officials for the purpose of taking instructions in regard to the matters pending before the Commission. Allegation 38 was then next taken up and directions were given requiring the respondent to answer the charge.

A-52. The next sitting of the Commission was held on 8th of June, 1965 when Mr. Sharma stated that his junior had been able to meet Bakhshi Ghulam Nabi and that he had nothing to submit in regard to the statements etc. filed by the Government in respect of Allegation 33 at that stage. The Commission, thereupon directed the respondent as well as Bakhshi Ghulam Nabi to reply the charges directing notice to be issued to Bakhshi Ghulam Nabi under Rule 6(1) (a) affording him an opportunity of making his representation in regard to the matter alleged against him. Allegation 12 was then taken up and orders were passed directing the respondent to file his answer, with notice being given under Rule 6(1) (a) to the several relatives of the respondent to whom housing plots were stated to have been improperly allotted at his instance. Allegations 29, 30 and 31 were taken up but as I desired to have more information as regards certain matters which I considered relevant, the Government was directed to file supplementary statements with further affidavits to elucidate the position directing at the same time that the statement etc. should be filed in the office of the Commission before 14th of June, 1965.

A-53. The next sitting of the Commission was held on 15th of June, 1965 when the statements etc. in relation to the charges 2 and 3 were taken up for consideration. Considerable argument was devoted by Mr. Sharma, learned counsel for the respondent, on what he termed was a departure made in the statements and affidavits from the case as put forward in the Allegation as notified. This referred, in great part, to the stage at which and in the manner in which the question of undue influence and coercion practised on 40 tiller owners by the respondent's brother Bakhshi Abdul Majid as well as by his son Bakhshi Bashir Ahmed, with the assistance and connivance of the respondent's son-in-law Mr. Nassarullah, who was then the Deputy Commissioner, Srinagar, was brought to the notice of the respondent. I ruled that there was really no variation in substance between the Allegation as notified and the statements and affidavits in support of that Allegation. I pointed out that this was a matter of detail which could be urged at the final hearing when the varacity of the statements in the affidavits could be considered. The respondent was, therefore, directed to answer the charge contained in Allegations 2 and 3 and notices were also issued to Bakhshi Bashir Ahmed, Bakhshi Abdul Majid and Maqsooda Begum in whose favour these sales were taken under Rule 6(1) (a) of the Rules to make such representations as they desired before I recorded findings on these Allegations.

A-54. I then took up Allegations 29 and 31 which had been reserved from the 14th of June, 1965 for orders as to whether a *prima facie* case had been made out or not. I held that such a case was made out and directed the respondent to answer the charge contained in the 2 allegations. Allegation 7 was next taken up and here again Mr. Bhasin, learned counsel for the respondent, urged that the Commission was not competent to inquire into the charge contained in the Allegation for the reason that the conduct of Col. Kak who was the Chairman of the Cantonment Board was involved and that as "Cantonments" was a Union Subject, the Commission could not inquire into the Allegation. I pointed out that what I was concerned with in the inquiry was merely the conduct of the respondent and whether an abuse of power by him was established. I considered that it was within my jurisdiction to inquire into and pronounce upon this. From the circumstance that Bakhshi Ghulam Mohammad as the Prime Minister of the State did not have in law any supervisory powers over the Cantonment Board and its officers, it would not follow that no abuse of power by the respondent could arise. As no objection besides this was raised to the issue of a notice in respect of Allegation 7, I held that a *prima facie* case existed and directed issue of notice to the respondent to answer the charge contained in Allegation 7. A notice under Rule 6(1) (a) was also directed to be issued to Bakhshi Ghulam Nabi, brother of the respondent, in whose name the property was purchased.

A-55. I then took up for consideration the statement of the case, affidavits and documents filed in relation to Allegation 8. I heard Mr. Khanna, learned counsel for the Government, who at great length placed before me, the various affidavits and documents in support of his submissions that a *prima facie* case regarding abuse of power had been made out. I, however, considered that there were really no documents which could support the charge and that the affidavits did not connect

the respondent with the making of the encroachment and, therefore, no *prima facie* case was made out of abuse of power on his part either to make the encroachment or to retain the encroached plot with notice of the encroachment. I, therefore, passed an order that no case had been disclosed against the respondent in regard to Allegation 8 and that he need not file any reply to the charge in that allegation.

A-56. The proceedings were then adjourned to the 21st of June, 1965 when I took up for consideration the question whether a *prima facie* case was disclosed by the statements etc. in relation to Allegations 13, 17, 18, 21, 28 and 36. In relation to allegation No. 13 Mr. Sharma raised various objections but most of these turned on questions of fact and depended in large part, on the veracity of the statements in the affidavits filed in support of the Government case. As, however, this was a matter which would be considered only at the stage of the final hearing, I overruled the several objections and held that a case had been made out to justify calling on the respondent to answer the charge.

A-57. As regards Allegation 17 the proceedings were adjourned to 28th of June, 1965 to enable the Government to file supplementary statements and affidavits in relation to several matters which were raised by Mr. Sharma, learned counsel for the respondent. Allegation 18 was next taken up. It consists of two parts. The first part related to abuse and exploitation of the official position of the respondent on one P. A. Roamer who held contracts for the supply of stores to the army being induced to take Bakhshi Abdul Majid as his partner. The second part of the same Allegation related to Roamer being later on forced to go out of this partnership so that thereafter the business became the sole propriety concern of Bakhshi Abdul Majid. There were no documents in support of either part of the charge, and the case of abuse rested wholly on the affidavits filed in support thereof. So far as these affidavits were concerned and in particular that of Roamer himself, there were statements there which, if accepted, would show that the respondent played some part in inducing Roamer to take Bakhshi Abdul Majid as his partner and share his business in army contracts with him. But as regards the second part of the charge namely Roamer being forced to go out of the partnership, even the affidavit of Roamer on which alone reliance could be placed, did not establish the complicity of the respondent in the expulsion. What was stated was that Bakhshi Abdul Majid withheld the account books of the Firm, as a result of which, the Income Tax authorities levied tax on Roamer on the basis of their estimate of the profits derived from supplies to the army authorities, estimates which it was stated far exceeded the actual profits derived and that Roamer was required by the Income Tax authorities to pay the tax so computed. Roamer finally approached the High Court and got some redress. The only statement in his affidavit connecting the respondent with the incidents relating to the income tax proceedings, was that he approached the respondent and sought his intercession to induce Bakhshi Abdul Majid to make the account books available to him and that the respondent refused to intervene and advised Roamer to deal with his partner himself. I was not able to appreciate how this failure to get Bakhshi Abdul Majid to deliver the account books of the Firm to P. A. Roamer, could amount to abuse of power.

A. 58. Mr. Khanna learned counsel submitted that from the Income Tax proceedings, I could reasonably draw the inference that the respondent was in some way responsible for these proceedings being taken against Roamer personally because in 1951 when these proceedings were taken, the Income Tax Act was being administered by the State Government. I felt unable to agree with this argument and, therefore, ruled that no *prima facie* case was made out in regard to the second part of the charge, though so far as the first part of the charge was concerned namely that the respondent induced Roamer to take Bakhshi Abdul Majid as his partner there was material for calling upon the respondent to answer. An order to this effect was, therefore, made and, besides the respondent, notice was also directed to be issued under Rule 6(1) (a) to Bakhshi Abdul Majid affording him an opportunity to be heard before findings were recorded.

A-59. Arguments in relation to the charge under Allegation 21 were next heard but I rose for the day before this was completed and the submissions were resumed on the next day 22nd of June, 1965. This Allegation also fell into two parts (1) that in order to prevent competition with two Cinema Theatres which were owned and run by Bakhshi Abdul Majid, the respondent was responsible for refusing licenses to two other theatres Jai Hind and Regina and managed to have this refused at one stage by his son-in-law Mr. Nassarullah who was then the Deputy Commissioner, Srinagar and (2) that in order finally to prevent any further competition he purchased the two buildings which were constructed for being run as Cinemas for the Transport Department even though there was no need for the same. The submission of Mr. Sharma was that the authority under the Cinematograph Act to grant or refuse a licence was the District Magistrate and any failure on the part of the Magistrate to grant the licence could not be any proof of abuse of official position on the part of the respondent and (2) the purchase of the two theatres Jai Hind and the Regina was proper, since the buildings were bonafide required for the use of the Department and, therefore, no inference adverse to the respondent could be drawn from such a purchase, which was besides really in the interest of the owners who had heavy liabilities to discharge. The question for consideration at the final hearing would be whether these licenses were refused or the applications therefor kept pending without disposal because of the interest which the respondent took in the matter, the delay or the refusal being of help to Bakhshi Abdul Majid who was running two of the 3 theatres which were then operating in the city. The fact, therefore, that the power to grant the licence was vested by the statute in the District Magistrate cannot by itself be sufficient to negative the possibility of abuse of power on the part of the respondent. The other question whether the buildings were needed by the Department would be a question of fact which have to be considered in the light of the materials placed before me particularly as to the manner in which and the purpose for which the buildings were used or failed to be used after the purchase. I, therefore, rejected the preliminary objections to the issue of notice and directed the respondent to file his answer to the charge contained in the Allegation and besides notice was also directed to be issued under Rule 6(1)(a) to Bakhshi Abdul Majid who was stated to have been benefited by the abuse of power alleged in the charge.

A-60. Allegation 28 was taken up and in relation to it Mr. Sharma brought to my notice that a petition challenging the order of the District Magistrate imposing the prohibition on the export of milk from Jammu to Kashmir had been filed in the High Court at the time when that order was passed, in which also a charge of malafides had been made, in support of which affidavits to the same effect as were now filed in support of Allegation 28 had been placed before the High Court. It was stated that the High Court had rejected the petition after considering these affidavits. Mr Sharma, therefore, submitted that I should peruse the entire file of the proceedings in the High Court before making any order calling upon the respondent to answer the charge.

A-61. No doubt the decision of the High Court holding that the malafides then alleged had not been made out, was not resjudicata nor would that adjudication be technically binding upon me, but I considered it proper that in dealing with the matter before me, I should acquaint myself fully with the details of the allegations then made as well the conclusions of the High Court before proceeding further with the allegation No. 28. The Secretary to the Commission was accordingly directed to address the Registrar of the High Court with the request to forward to the Commission the record of the proceedings in the writ petition and the consideration of Allegation 28 was adjourned pending the receipt of these records.

A-62. Mr. Sharma, raised several questions in relation to the charge in allegation No. 36 but most of them turned on questions of fact. I pointed out that one of the items of credit in this account which was opened in the personal name of the respondent and into which cheques which were admittedly intended for the National Defence Fund were paid, was a cheque for Rs. 10,000/- drawn by one Mohammad Maqbool, who had, in an affidavit stated that the amount was a loan which he had made to the respondent at the latter's request. If this were made out at the hearing, there would be proof that private moneys of the respondent had been put into this account which would be operated by him personally. This I observed would raise a *prima facie* case in respect of this charge. After this was pointed out Mr. Sharma did not raise any other objection and notice was issued to the respondent to answer the charge in Allegation 36.

A.63. The next sitting was held on 28th of June, 1965 when I took up for consideration the material in relation to Allegation 17 in regard to which the Government had filed supplementary statements and affidavits in accordance with the suggestions made at the previous sitting. Though Mr. Sharma raised several objections to the issue of notice as regards this allegation, I considered that the points raised were matters of detail, as regards the truth or acceptability of the several statements in the affidavits and as these were matters which were to be considered only at the stage of the final hearing, I directed notice to be issued to the respondent to answer the charge set out in Allegation 17 and also to Bakhshi Abdul Majid and others under Rule 6(1)(a) who it was stated had forced themselves into partnership with Ali Shah through the intervention of the respondent.

A-64. The next sitting was on the 5th of July, 1965 and this was mainly taken up with certain miscellaneous petitions which were filed by the respondent for the production of documents which were listed in his application. Detailed orders were passed on this petition (miscellaneous petition 9/1965). Besides an application from the respondent for further time for filing his replies was also granted.

A-65. 10th July, 1965 was the next date of sitting when I considered mainly the question as to the procedure to be followed at the stage of the final hearing—the Transport group being ready for such hearing. I pointed out that even in regard to the Transport group the respondent had still time to file his reply to three of the charges, besides that inspection by him of the original files and documents in respect of these charges in the office of the Commission had not yet been completed and was expected to take some more time. I adjourned the proceedings to 28th of July, 1965 when I took up Allegation 28 as the papers in the writ petition filed in the High Court had been received. After hearing counsel on both the sides in great detail, on the materials placed before me as well as on the papers received from the High Court, I hold that no *prima facie* case was made out and that there was no justification for directing the respondent to answer the charge contained in Allegation 28. After passing orders on certain miscellaneous matters of procedure and the production of documents the sittings were adjourned to 7th of August, 1965 when I took up the question of the procedure to be followed by me at the stage of the final hearing. As quite an amount of controversy has been raised in relation to the legality and propriety of the procedure which I ultimately decided to follow at the stage of the final hearing, it is necessary to set out in some detail the proceedings of this date to properly appreciate the effect of the procedure indicated.

A-66. Immediately I stated that the main purpose of the sitting was to determine the procedure to be followed in conducting the final stage of the inquiry, into the charges of the Transport group as regards which all the preliminaries had been completed. Mr. Khambatta started making his submission on the procedure which he would desire me to follow. Before, however, he proceeded much further I handed over to counsel on both the sides a type written statement which I had prepared for their perusal and read it out and invited them to make suggestions or put forward submissions in the light of my views on the matter, which I expressly stated were tentative and which I was willing to modify in the light of any arguments to be advanced. In this prepared statement, which I read out, I started by pointing out that all the preliminaries in relation to the charges in the Transport group had been completed and that the time had arrived for determining the procedure to be followed at the stage of the final hearing of the matters involved in that group. I said "the Commission is aware that this is a matter entirely for the Commission to determine but on this, in line with the attitude which it has adopted upto now on the several matters which have come before it, it would prefer to do so after hearing counsel".

"Before, however, inviting submissions from the counsel, the

Commission would like to make its position on certain points which it considered essential, clear :—

- (1) The hearing in respect of the Transport group should not wait for the completion of the preliminaries in respect of other allegations or be in any manner delayed on that account.
- (2) The date suggested for the commencement of the final hearing should, while affording reasonable time to counsel for preparation, ensure that the Commission is not kept idle for any avoidable period”.

A-67. Then as regards the procedure I pointed out that :—

- (1) “First we have the basic postulate that the onus of proving the charge contained in the several allegations, is on the Government.
- (2) Next as to the material by which such proof could be effected. This consists at present of affidavits and documents”.

A-68. “Taking the affidavits first, in so far as the facts stated in the affidavits are supported by the documents filed with the Commission, including the original files and records, there would be no question of the deponents being required to be called for oral examination before the Commission. But as counsel is aware there are facts stated in some of the affidavits which are either not supported in terms by documents or which seek to explain why the documents are in a form which appears to run contrary to the case of the Government. In both of these cases unless the Government are able to point to any admission by the respondent, oral evidence supported if necessary by further documents which can be tested by cross-examination would have to be furnished before the Commission can accept the facts so stated as proved. In saying, this, the Commission wishes to make it clear that it would be open to the Government to rely on circumstances otherwise established which with certainty point to the conclusion that their version of the facts as set out in any particular affidavit must be true—It is only necessary to add that having regard to the nature of the charges, the Commission cannot accept any charge as proved merely on a balance of probabilities. but the degree of proof must be such as to induce conviction of a reasonable and acceptable degree of certainty..... ”

A-69. “What has now been stated applies mutatis mutandi to the respondent. As regards him also where the documents, official record or files do not support him or where a positive case is set up by him in explanation of the facts stated in the allegation, statement of the case or affidavits, he cannot rest content merely with affidavits, his own or those supporting him, filed on his behalf. The onus of proving such positive case being on him, evidence to establish the facts alleged would have to be led. Unless the respondent is content to rely merely on a submission that the Government had not discharged the burden of proof which lies on them to

establish the charges, he should lead evidence to rebut the charge. Unless he is supported by documents either official records or those whose genuineness is above question, he cannot rely merely on denials or statements in affidavits filed on his behalf. Here again the Commission desires to leave it to the respondent and his counsel to determine the quantum of evidence which he or they consider necessary to negative the case of the Government or to prove any particular allegation of fact which he or they desire the Commission to be held "established".

A-70. After listening to this prepared statement Mr. Khambatta submitted that the standard of proof indicated in the note was unnecessarily high and that since the report of the Commission was merely "fact finding" and advisory on the basis of which the Government might take further action, if any, it would be sufficient if the Commission would record a finding in respect of each of the charges that the allegation made against the respondent had or had not been sufficiently proved. I expressed my disagreement with this view and stated that unless the charge which was a serious reflection upon the public conduct of a person in the position of a Prime Minister of the State was clearly proved, I could not record a finding in favour of the Government.

A-71. Mr. Khambatta next referred to a passage in the report of Mr. S. R. Das in the inquiry against Mr. Kairon and urged that I might proceed on the basis of affidavits filed on behalf of the Government and not reject them for the reason that they were not supported by documentary evidence as I had stated in my prepared note. I, however, felt that there were substantial points of difference between the proceedings of Kairon Inquiry and the one before me and so I considered that in justice and fairness to both the parties, oral evidence at the discretion of each side be permitted to the extent indicated.

A-72. In saying this, I had particularly in mind charges such as those in Allegation 2 where it was alleged that the tiller owners had not been paid full price which had been specified as the sale consideration. Government could not possibly prove their case except by calling oral evidence and if they were able to establish a *prima facie* case by reference to strong probabilities, it would be most unjust and unfair to deny to the respondent the right to lead oral evidence to rebut it. I understood Mr. Khambatta to be generally satisfied with the procedure laid down in the prepared note.

A-73. I then heard Mr. Sen for his reaction to what I had tentatively proposed. His first submission was that I should insist on every deponent of an affidavit filed on behalf of the Government being orally examined before me and being subjected to cross-examination. This he submitted was what I should do, both as a requirement of the law as well as of prudence. Learned counsel, however, would not elaborate how, as a matter of law, the respondent was entitled to have every deponent of affidavit brought before me for oral examination including cross-examination by the respondent nor was I persuaded

that as a matter of prudence I would be doing an injustice to the respondent if I did not insist on it. In view of the submissions, however, I passed a formal order setting out reasons why I rejected the submission of Mr. Sen. I said :—

“First as regards there being a legal obligation on the Commission to reject affidavit—evidence unless the deponent was tendered for cross-examination, Mr. Sen did not draw the Commission’s attention to any specific provision in support of this submission either in the Jammu and Kashmir Commission’s of Inquiry Act, 1962 or the rules made thereunder. Coming first to the Act, its section 9 empowers the Commission, “subject to rules that may be made in that behalf to regulate its own procedure” and this would mean a plenary power to decide whether affidavit—evidence shall be sufficient or whether the same should be accepted only after it was tested by cross-examination. Section 15 of the Act empowers the Government to make rules, and among the matters in respect of which rules might be made are (section 15(2)(c)— “the manner in which inquiries may be held under the Act and the procedure to be followed by the Commission in respect of the proceedings before it”. Turning next to the rules, subject to which alone the Commission would have plenary powers under section 9, Part III of the rules which deals with procedure, does not preclude the Commission from acting on affidavit-evidence, though of course it would be open to the Commission to require oral evidence to be led when satisfied that it would be necessary properly to arrive at findings which it is called upon to record. Rule II in line with section 9 of the Act to which reference has already been made, repeats the provision that the Commission was empowered “to regulate its procedure in respect of any matter for which no provision is made in these rules”. Affidavit-evidence, is obviously one type of evidence, being a statement on oath before a person empowered to administer an oath which means that the deponent can be prosecuted for perjury if the statement was deliberately false. No doubt it suffers from a certain degree of infirmity by reason of the deponent not being subjected to cross-examination, but it is nevertheless acceptable evidence and even the regular Courts are competent to decide matters before them on the basis of affidavits-evidence. It is needless to mention that all writ petitions in the High Courts and in the Supreme Court are dealt with almost invariably only on the facts stated in affidavits. In view of these circumstances the Commission considered that there was no substance in the objection raised by Mr. Sen that the Commission was incompetent in law to proceed on the basis of affidavit-evidence unless the same were tested by cross-examination. It need only be added that in the Kairon Inquiry held under an Act and Rules in terms indetical with the Jammu and Kashmir enactment and rules already set out, Mr. S. R. Das proceeded wholly on affidavit-evidence and did not think it necessary to permit the parties to lead any oral evidence or to require

any deponent of an affidavit to be tendered for cross-examination and Mr. Sen made no comment on this precedent.

The alternative submission of learned counsel that as a matter of prudence the Commission ought to require deponents of affidavits to be produced for cross-examination requires next to be considered. In the prepared note set out earlier, the Commission has indicated that it was only in cases where the facts stated in an affidavit were borne out by official records whose genuineness was not successfully impeached that it would accept affidavit-evidence and in these circumstances the facts stated in these affidavits would serve merely as links to make intelligible the contents of documents. The Commission has already indicated that it would not act on statements and affidavits which ran contrary to official records or which the other proved circumstances would not establish beyond possibility of reasonable doubt. In these circumstances the Commission considers that no requirement of prudence compels it to reject facts stated in affidavits merely on the ground that the deponent has not been tendered for or subjected to cross-examination".

A-74. Mr Sen next made some submissions as regards certain replications which had been filed by the Government and it was objected that this was not in conformity with the directions I had given. I then pointed out that strictly speaking the replications were in order only in so far as they sought to reply to some positive case set up by the respondent in answer to the charge. The Government had, however, not confined their replications to these cases merely, but had filed the same in respect of each and every allegation, even though the respondent had merely denied the charge and had not set up any positive case in answer thereto. I, however, pointed out that I would treat these replications merely as a summary by the Government of their case and that I would not take any notice of any facts stated in these replications which were not in or went beyond their original statement of the case.

A-75. The next matter taken up was about the date when the final hearing and argument on the allegations pertaining to the Transport group should commence. Learned counsel on both the sides agreed that it might start on the 6th of September, 1965. As the Government was expected to take 7 or 8 days to complete their submissions, I said that respondents might commence their arguments from 27th of September which would give time to their counsel to prepare after hearing the submissions on behalf of the Government.

A-76. I then dealt with certain petitions filed by the respondent for calling certain documents which were stated to be relevant for matters contained in several allegations. Next was a petition for extension of time to file replies to allegations, where the time originally granted was stated not to be sufficient. The prayer was granted and I directed that replies to Allegations 4, 5, 6, 7, 29, 30 and 31 might be filed on or before

the 14th of August, 1965 and similarly in regard to the Allegations 2, 3, 13, 17, 18, 21 and 36 that they could be filed on or before the 4th of September, 1965. These being the dates which Mr. Sharma learned counsel suggested would give him enough time to prepare and file (A full report of the proceedings at this sitting will be found as Annexure I).

A-77. The sitting was next adjourned to 16th of August, 1965 when I dealt with petitions by either side in relation to the production of certain documents. As, however, counsel desired in respect of some of them to have more time to consider their position, after disposing of such of the matters as were ready, I adjourned the proceedings to 23rd of August, 1965 when the entirety of the prayers in relation to the pending petitions were disposed of. The proceedings were then adjourned to the 31st of August, 1965 when I took up and disposed of the prayers made in relation to the several documents called for by either side and gave certain directions in relation to the points raised by the learned counsel for the respondent.

A-78. The proceedings were then adjourned to 2nd of September, 1965 when the question of the issue of notice to the respondent in relation to Allegation 1 was taken up. Mr. Sharma stated that the respondent could, if thought fit, be called to answer the charge in Allegation 1 after the charges in regard to Allegations 2 to 38 had been heard by the Commission and findings recorded in respect of each of them adverse to the respondent. I expressed my inability to accept this suggestion. While agreeing with learned counsel as regards the intimate connection between Allegations 2 to 38 on one hand and the charge in Allegation 1, it did not in my opinion follow that I had to record findings in regard to Allegations 2 to 38 before calling upon the respondent to submit his answer to Allegation 1. I, however, agreed with Mr. Sharma that the final hearing as regard the subject matter of Allegation 1 should be postponed till after the other allegations were inquired into. But I saw no reason why the preliminary steps for bringing Allegation No. 1 ripe for inquiry should not be gone through before the arguments on the other allegations had been finally heard. As this was the only objection raised to the issue of the notice, I decided that a notice should issue to the respondent and to the several relatives mentioned in part I of the 1st Schedule to answer the statement of the case, the affidavits and documents filed by the Government in relation to Allegation 1. I, however, expressly stated that while the preliminary stages in respect of Allegation 1—namely the filing of the reply, inspection of the documents, applications for production of documents etc. would all be completed, the Allegation would not be taken up for inquiry until the inquiry in regard to the other allegations was completed. I also stated that if I were of the opinion after the final hearing in respect of Allegations 2 to 38 (other than Allegations 8 and 28 which I had rejected as not disclosing a *prima facie* case) that the same had not been made out, I would indicate to the counsel what I proposed to do in respect of Allegation 1.

A-79. The next question that was mooted was as to the time within which the replies of the respondent and other parties to whom the notices had been issued under Rule 6(1)(a) in regard to the charge

in Allegation I should be filed. I agreed to the dates suggested by Mr. Sharma namely that it might be done on or before 1st of December, 1965. Thereafter orders were passed in relation to prayers made by the Government for the production of certain documents by the respondent.

A. 80. When at the close of the sitting I mentioned that we would be meeting next on the 6th of September, 1965 Mr. Sharma, learned counsel for the respondent, intervened to say that that sitting would not be held. Mr. Khanna then explained to me that the respondent had filed a writ petition in the High Court challenging the validity of the Notification constituting the Commission, as well as the procedure adopted by me and had obtained orders of stay as regards the hearing on the 6th. On my being informed of these proceedings before the High Court, I adjourned the proceedings listed to 6th of September, 1965 sine-die, till after the conclusion of the proceedings in the court.

A. 81. I do not think it necessary to narrate the grounds on the basis of which the writ petition was filed nor about the history of these proceedings. Forwarded along with this report is a copy of the paper book prepared for the use of the Supreme Court in which is to be found the several petitions, affidavits and counter-affidavits etc. which were filed in connection with the writ petition in the High Court. By an order dated 27th December, 1965, the High Court issued a writ of certiorari quashing the Notification appointing the Commission as well as its proceedings. The matter was then taken up in appeal by the State Government to the Supreme Court and that Court by its order dated 6th of May, 1965 allowed the appeal and dismissed the writ petition filed by the respondent in the High Court. A copy of the judgement of the Supreme Court is forwarded along with this report. During this entire period between September, 1965 and May, 1965 the Commission held no sitting and the only order that it passed was to extend the time for filing the reply by the respondent to the charge in Allegation I to the 15th of December, 1965.

A. 82. After the termination of the proceedings in the Courts, the Commission held its next sitting at Srinagar on 18-5-1966. Notice was given to the parties—to the Government as well as to the respondent of this sitting. On receipt of the notice the respondent sent a telegram praying for an adjournment on the ground that the time was too short for him to engage counsel. But as this sitting was held not to pass any order which might prejudicially affect either party but merely to indicate the steps to be taken next to proceed with the inquiry, the sitting was proceeded with. Learned counsel for the respondent appeared at the hearing and at the commencement of the proceedings repeated the prayer in the respondent's telegram already referred to and requested that the proceedings might be adjourned. But after I explained the purpose of the sitting, they did not persist in their submission.

A. 83. I drew the attention of the learned counsel for the Government to the fact that there were two writ petitions pending in the High Court which had been filed after the learned judges had delivered judgement on 27-12-1965 allowing the writ petition of the respondent

and setting aside the Notification constituting the Commission. One of these was for quashing a Notification issued by the Government extending the life of this Commission which was published in the State Gazette after the 27th of December, 1965. The second was for the issue of writ of quo warranto directed against me based on an allegation that I had been exercising the powers vested in me by the Notification constituting me as the Commission of Inquiry, even after the judgement of the High Court. These petitions had been kept pending till after the disposal of the appeal filed by the State Government in the Supreme Court against the judgement of the High Court, as the charges contained in the two writ petitions apart from questions of fact, turned principally on the correctness of the judgement of the High Court quashing the Notification. I stated that though no interim order had been passed by the High Court in either of these petitions, I would out of respect to the Court not proceed to take any definitive steps in the progress of the inquiry until the High Court decided these petitions. As I was informed that the petitions were likely to be taken up for hearing in the High Court on the 25th of May, 1966 I adjourned the proceedings tentatively to the 15th of June, 1966 as the date on which the final hearing of the Transport group would commence.

A. 84. I further pointed out that the reply of the respondent to the charge in Allegation 1 had not even by then been filed though the time therefor had expired on the 15th of December, 1965. In view, however, of the matters which had transpired since 15th of December, 1965 in relation to these proceedings I extended the time for filing the reply to 15th of June, 1966. As learned counsel for the respondent was present at this hearing I suggested to them that they would be assisting me if they would proceed even now with the inspection of the records (they had ceased to inspect the records from the end of August, 1965) so that the preliminary stages might be gone through and the other charges would become ripe for inquiry. I also desired that they might file a list of allegations in respect of which inspection was completed so that I might know those in regard to which they would be ready for the final hearing to commence. I then directed the Government to file a statement indicating the order in which they would like the several allegations to be taken up for hearing. The Government agreed to do so. I next referred to the need to the parties to file applications, if any, for summoning documents and witnesses well in advance of the hearing, which would obviate the necessity for adjourning the hearings after they had once been fixed. At the close of the sitting, learned counsel for the respondent informed me that they were satisfied that no prejudice had been caused to the respondent by the refusal to adjourn the sitting.

A. 85. The writ petitions in the High Court to which reference has already been made were heard by the High Court on the 25th of May, 1966 and were dismissed. The hearing fixed for 15th of June, 1966, therefore, became final and the sitting was held as already announced. From then on there were sittings of the Commission practically continuously to 22nd of December, 1966. During this period the Commission sat on 84 days and the learned counsel for the Government placed before me the entire material in regard to the several allegations.

A-86. I do not think it necessary to refer to the details of these hearings except in regard to one or two matters. The first is with reference to the presence of the respondent at the hearings. In compliance with my directions dated 18-5-1966, the Government filed a statement indicating the order in which I might take up the several allegations or groups of allegations for inquiry. A copy of this statement with the related petition which was numbered Miscellaneous Petition 56 of 1966 was circulated to the respondent and the respondent filed an application signed by himself dated 15-6-1966 in which he stated that as the matter depended on the convenience and availability of his senior counsel, he was not in a position to commit himself to the order suggested by Government but that he would intimate to me and make his submissions immediately he heard from his counsel. This he followed with Miscellaneous Petition 57 of 1966 which he filed on the 16th of June, 1966 i.e. a day after the commencement of the inquiry. In this he complained that the statement by the Government as to the order in which they would like the allegations to be taken up for inquiry have been served upon him only on the 13th of June and this left him no time to get this counsel ready with the preparation of the Transport group, if that was proposed to be taken up first. He added "the applicant has been informed that Commission has brushed aside the applicant's desire and has commenced the hearing of the Transport group on 15-6-1966 *ex parte*. This was most unwarranted. The Commission is welcome to take any decision but let the Commission place the present application on record". He also annexed to the petition a memorial which he had addressed to the Governor of the State, seeking certain clarifications and orders as regards the propriety of his disclosing to the Commission the proceedings of the Council of Ministers.

A-87. On receipt of this application Miscellaneous Petition 57 I passed an order in which I observed that the 15th of June had been fixed for the commencement of the first hearing in the presence of two of the counsels for the respondent—Shri R. K. Koul and Shri P. L. Handoo—who were besides acquainted with everything that took place at that hearing. I then pointed out that the Transport group was a set of allegations which had been ripe for hearing nearly a year and had been posted for hearing as early as 6th of September, 1965 and, therefore, there was no question of any inconvenience or surprise being caused by the hearing of that group being taken up in the first instance. The hearing on the 15th of June, 1966 I said was in reality a continuation of the proceedings of September, 1965 and was in substitution of the hearing fixed for 6th of September, 1965 which could not take place because of the writ petition filed by the respondent and the orders of the High Court obtained by him thereon. I, therefore, rejected the statement that because of the uncertainty of the particular allegations which would be taken up for hearing on the 15th of June, the respondent was not ready to defend himself at the inquiry, as wholly without substance.

A-88. The next question I considered was what in view of what had been stated by the respondent should be done in order to afford him the fullest opportunity to effectively appear before the Commission. Mr. Khambatta, learned counsel for the Government, who was as anxious and eager as myself, that the respondent should appear before the

Commission to defend himself so that every answer there might be to the charges might be made known and be properly placed before me, suggested that the proceedings might be adjourned from the 17th of June till the 4th of July, 1966. He further stated that as the respondent appeared to have made up his mind to take part in the inquiry and defend himself, he would re-argue the case and repeat the submissions that he had made or would be making on the 15th, 16th and 17th so that counsel for the respondent might be in a position to follow his arguments and meet the points raised. Besides I considered that an adjournment till 4th of July, 1966 which would be for near 3 weeks, would give the respondent sufficient time to get his counsel ready and prepare to join the inquiry and place his case before me. I further stated that the Transport group would be heard or rather reheard on the 4th of July, 1966 and that on that day I would hear the submissions of counsel for the respondent regarding the order in which it would be convenient for them to have the other allegations taken up for hearing. As the respondent was not present by himself or through his counsel at the sitting on the 16th of June, I had the proceedings and orders passed on the day prepared and circulated to both the sides.

A-89. In the orders that I passed on that day, I stated that in relation to Allegation I no reply had until then been filed. I pointed out that the preliminary hearing in regard to the allegation had been held on 23rd of August, 1965 and this had been adjourned to 2nd of September at the request of Mr. Sharma to enable him to study the documents. After hearing Mr. Sharma I had directed the issue of notice to the respondent and others, and though Mr. Sharma wanted time only till the middle of November, 1965 for the filing of the replies I granted time till 1st of December, 1965. I recalled that on the 30th of November, 1965 an application had been made by Mr. Sharma to extend the time till after the judgement of the High Court in the writ petition. I did not consider the prayer justified but granted time till the 15th of December, 1965 but no reply had been filed within the time granted but on the 13th of December a second application was filed again for extension of time on the same grounds as in the petition filed on the 30th November which I rejected. I was informed that a petition was thereafter filed in the High Court seeking the same relief but this I was told had later been withdrawn and dismissed. Thereafter the matter had been dealt with by me on the 18th of May, 1966 when I granted further time till the 15th of June, 1966. There had been no reference to the reply to Allegation I in the Miscellaneous Petition 57 filed on 16th June, 1966 and no prayer was made seeking the extension of the time. But notwithstanding this I extended the time for filing the reply till the 4th of July—the date of the next sitting. The order was dictated orally at the sitting and a copy of the transcript was circulated to the parties on the 17th June.

A-90. The next sitting was, as stated earlier, held on 4-7-1966. On that day Mr. Bhasin, the learned counsel for the respondent, appeared before the Commission and filed the petition which was numbered 58 of 1966. The petition was a long one covering over 50 pages of typed matter. When the petition was presented, Mr. Bhasin desired that I should immediately read it and pass orders thereon, adding that his instructions were that unless the prayers in the petition were allowed and

the reliefs sought granted, he was not to participate in the defence but to allow the inquiry to proceed *ex-parte*. As I earnestly desired that I should hear in full the defence of the respondent as this was the most satisfactory way of ensuring that correct findings were reached on the several matters which were the subject matter of this inquiry, I intimated that I was eager to consider the reliefs prayed for in the petition and if possible to facilitate the counsel for the defence appearing before me.

A-91. With this view I suggested that Mr. Bhasin might briefly indicate the prayers in the petition so that if I could pass favourable orders on them I could immediately convey this information to him. Learned counsel, however, persisted in saying that he would like me to read the petition myself for he added that the petition had been carefully drawn up and had brought out certain anomalies in the procedure which I had indicated on 7th August, 1965 (*vide* Annexure I) as that which I would follow. On further suggestions from me, Mr. Bhasin stated that owing to the complexity of the matters involved, he was not in a position to summarise the matter contained in the petition or the prayers in it. He, however, stated that one of the main matters which the petition sought was a review of the directions passed on 7th August, 1965 touching the obligation of the Government to produce every deponent who had filed an affidavit in support of their case to be produced for oral examination. When this was mentioned, I observed that that direction had been passed after hearing the parties in full and that it represented what in my opinion was a procedure which would do justice to both the parties. Besides I pointed out that the propriety of the procedure had been challenged before the Courts and had survived that challenge. I, therefore, stated that I did not propose to depart from what I had laid down and compel the Government to produce every deponent for cross-examination. I also explained in some detail how that order would not hurt his client. Mr. Bhasin, however, submitted that this was not the only matter which had been raised in the petition and that, therefore, I might go through the petition myself and decide on this, as well as on the other matters, which he was not in a position to indicate immediately. When he further added that unless orders were passed on this petition and unless the orders were considered satisfactory by his client, his instructions were not to appear before me but allow the inquiry to proceed *ex-parte*, I expressed regret at this attitude and suggested that learned counsel might participate in the inquiry subject to his being satisfied with the orders that might ultimately be passed on the petition and that he might consider in consultation with his client the question of withdrawing from the inquiry after this petition was disposed of. Mr. Bhasin, however, would not agree even to this course and stated that without favourable orders on the petition in regard to every prayer made in it being granted he would not continue to appear before me. I then pointed out that having regard to the length of the petition and the matters raised therein which according to Mr. Bhasin were of great complexity requiring deep study and careful consideration, I could not possibly pronounce orders on it immediately. I, however, promised to take it up for further consideration the next day i.e. on 5th July, 1966. I further added that by the order passed at the previous sitting on 16th June, 1966 on the petition filed by the respondent, Mr. Khambatta had been requested to

repeat the arguments he had addressed to me on the 15th, 16th and 17th of June, 1966 and that he would do so if learned counsel would stay and would listen to them. Mr. Bhasin, however, stated that he was not desirous of hearing these arguments but he would allow the inquiry to proceed *ex-parte*.

A-92. Petition 58 of 1966 was taken up on 5th July, 1966 in presence of Mr. Bhasin. I informed Mr. Bhasin that owing to the length of the petition I had not been able to study it over-night and, therefore, suggested that Mr. Bhasin might proceed paragraph by paragraph and make his submissions in relation to each and address arguments regarding the prayers contained in the petition. Mr. Bhasin however, stated that he had nothing to add to the petition and that I might go through the petition myself and pass such orders as I might deem proper.

A-93. There were certain matters, however, in the petition to which I thought it necessary to draw counsel's attention in order to obtain a clarification as to their nature and purpose. In the first place the petition repeated the charge of *malafides* on the part of the Ministers now in office, who were stated to have been responsible for the setting up of this Commission. This matter had been put before the High Court and had not been accepted by the learned judges. It had been repeated before the Supreme Court and had been rejected in terms in the judgement pronounced by it. In view of the previous history I inquired of Mr. Bhasin whether the petition was intended merely as a piece of propaganda for public consumption or had been filed with the genuine intention of seeking clarification of the orders passed or the procedure prescribed and praying for relief which I could properly grant. Learned counsel Mr. Bhasin, however, disclaimed the suggestion regarding the petition being a piece of propaganda and stated that he was seeking the reliefs prayed for in it with the sincere intention of participating in the inquiry, if he was satisfied that the procedure intended to be adopted by me in the conduct of the inquiry would afford him a reasonable opportunity to present his case.

A-93 (a). Besides there were certain passages in the petition which appeared to suggest that the respondent was not satisfied about my fairness, and impartiality. I put it to Mr. Bhasin whether these passages which I read out to him were meant to be reflections against me. He, however, assured me that the passages might not have been happily drawn up, and that he and his client had absolute confidence that they would have justice at my hands. I accepted these assurances and stated that I would consider and deal with every point raised in the petition with meticulous care. In view of the assurances and submissions of the learned counsel, I stated that orders on the petition would be passed on the 11th of July, 1966.

A-94. At the next sitting of the Commission on 11th of July, 1966 I passed orders on the petition dealing in detail with every point raised in it.

A-95. As the greater part of this petition was devoted to a

criticism of the procedure indicated by me in my order dated 7th August, 1965 and in particular to the need for oral examination of the deponent of every affidavit as the only method of ensuring that justice was done to the respondent, I consider it useful to extract passages from this order of 11th of July, 1966 in which I indicated to the respondent that far from the procedure hurting him, it was really one which would help him in his defence. I said "under the orders already passed as regards the procedure to be followed it is not that affidavits are divided into two classes (1) affidavits where the facts stated in them are supported by the documents and (2) affidavits where the facts are not supported by documents which seek to explain away documents; but that a distinction is made between facts relied on in proof of the charge stated in affidavits which are borne out by documents whose genuineness is not successfully impeached and facts for a like purpose stated in affidavits whose acceptance depends merely upon the credibility or veracity of the deponents. It will thus be seen that this is very different from a distinction being made between the two classes of affidavits as is the basis of the argument which has been developed in the petition. I consider that there is a vital distinction between the two sets of facts which has been set out above, because in the one case the acceptance of the fact depends upon the genuineness of the document which proves that fact and which is merely put before it in a convenient form by the affidavit which has been filed. In the other case the fact has to depend for its acceptance not on the basis of other acceptable evidence of unimpeachable integrity but on the mere circumstances that a deponent has stated it on oath. Where the fact stated in an affidavit is borne out by unimpeachable documentary evidence it will be seen that the credibility or veracity of the witness does not come into question at all, for if the document in which that fact is stated is accepted as genuine, that is itself proof of the fact which is sought to be established. In such a case there could be no reason for requiring the Government to tender oral evidence of a person who has stated in his affidavit the contents of a genuine document, merely because of the fact that he had made an affidavit, and subject him to cross-examination. In other words it merely means that in such a case the fact is established not by the statement on oath by the deponent but by the documentary evidence or official record whose genuineness is not impeached. Under the orders passed by me where the Government seek to rely on an affidavit to prove a fact of the other type, I have ruled that I would not accept it unless the deponent is called for oral examination before me and an opportunity has been given to the respondent and other parties to whom notices have been given, to cross-examine him. I see a vital difference between these two types of facts as regards their probative value and consider that the order passed which proceeds on this distinction is just and calculated to protect the interest of every party before it including the respondent. It is no doubt true that on the basis of the above order and directions as to oral evidence, the scope of oral evidence would be considerably reduced but this would not be at the sacrifice of any principle of justice or of law, for it is based on rational principle and is calculated to aid the determination of the truth, besides ensuring expedition."

A-96. Pausing here I have to point out that in the first place under the Commission of Inquiry Act as well as under the rules framed

thereunder, the Commission has plenary authority to determine its procedure subject only to the rules and there is no rule under which the Commission is bound to require every deponent of an affidavit to appear before it for oral examination and afford an opportunity to the other side to cross-examine such a witness. The Supreme Court which considered the rules on this topic, held that there was no such obligation upon the Commission to require the oral examination of the deponent of every affidavit. In view of this circumstance it could not be said that the procedure laid down by me was contrary to law. In the second place the effect of the failure to call a deponent for oral examination before the Commission would be that the party filing the affidavit would not be entitled to rely on the facts stated in the affidavits in proof of his case. During the course of the inquiry, the Government intimated that they did not propose to adduce any oral evidence in respect of any charge. In view of this statement, I have proceeded wholly on the basis of the documents and declined to permit Government to place before me any affidavit as proof of any fact except for the purpose of identifying the documents or for explaining their sequence. Where any fact to be proved was not established by a document and the proof of that fact depended wholly on the veracity of the witness who had deposed to that fact in an affidavit I intimated to the learned counsel for the Government that I would hold that they had failed on such an issue. Thus in effect the procedure which I had laid down has really led to the material in the inquiry being confined to documentary evidence whose genuineness was not impeached. Lastly I took into account the fact that in support of the 35 allegations which were subject of inquiry, the Government had filed as many as 443 affidavits by about 350 persons (this because some officers had filed affidavits in more than one Allegation) I thought there was no purpose of requiring the Government to produce these 350 persons for oral examination, merely for getting confirmation from them of the contents and truth of official files and documents whose genuineness was not impeached. I was wholly unable to comprehend the insistence on the examination of the deponents, for if the Government relied merely on the documents and wanted me to discard the affidavits, as in fact they virtually did when they decided not to adduce oral evidence, it was the Government that stood the risk of findings being recorded against them and the respondent could in no way be prejudiced. Of course, if the object of the respondent was merely to prolong the inquiry, it would assume a very different aspect. If all these 350 deponents had to be examined and cross-examined, I felt the inquiry would never end at least not within four or five years and secondly that in regard to those deponents who spoke merely to the contents of the documents, forming part of the official record, the oral evidence was wholly unnecessary and in reality superfluous.

A-97. The order passed on the 11th of July, 1966 dealt with each of the points made in it and as this was almost the last petition which was filed by the respondent I considered that it would be convenient that the whole of this should be incorporated in this report and be treated as part of it. I am, therefore, appending it as an annexure to this report. (The full text of this order is set out in Annexure II).

A-98. It would be seen from the order that at the end of it

I made a request to the counsel for the respondent that he should participate in the inquiry and assist me by putting forward before me and explain the defence which he had raised as well as adduce before me such evidence as he had in support of his defence. I also pointed out that Mr. Khambatta would repeat in his presence all the arguments and submissions which he had made over since the commencement of the final hearing on the 15th of June, 1966. Notwithstanding my earnest plea to this effect, learned counsel for the respondent Mr. Bhasin stated that his instructions were not to participate in the inquiry. I stated that this decision was rather unfortunate but I suggested that it would be in the interest of the respondent that he might depute some counsel to watch the proceedings on his behalf so that in the event of his changing his mind at a later stage and deciding to participate in the inquiry and put forward his defence against the charges brought against him, he would be in a position to know precisely the documents on which reliance was placed by the learned counsel for the Government, the interpretation which was placed upon them and the inferences sought to be drawn from them. Mr. Bhasin, however, told me that he and his client knew what was going to be argued by the Government and, therefore, there was no need for deputing any counsel to watch these proceedings.

A-99. From that day onwards i.e. 11th of July, 1966 no counsel appeared before me at the inquiry until November, 1966 to which I shall advert later. I must, however, add that during the entirety of the hearing at Srinagar from the 11th of July, 1966 to the 1st week of October, 1966 a representative of the respondent who I understand had previously been an employee of the State Government attended these proceedings and keeping with him the record which had been supplied to the respondent, took notes of the arguments of the Government and the observations made by me at each sitting.

A-100. I did not hear from the respondent as regards any change of attitude on his part in regard to his participating in the inquiry during the months of July and August, 1966. Towards the middle of September, 1966 learned counsel for the Government desired that it would be helpful for understanding the case both in respect of the matters put forward by the Government as well as the defence raised by the respondent as regards Allegation 32 which related to the providing of electric connections to a house of the respondent at Ishber and of his son at Cheshmashahi, if I should inspect these two houses and see for myself how the electric lines were taken from certain points. I accordingly directed notice to issue to the respondent intimating to him that I would like to inspect these two properties in connection with the subject matter of Allegation 32. The Secretary, to the Commission, received a reply from Mr. Bhasin learned counsel for the respondent stating that the respondent would welcome my inspecting these two premises, suggesting a date on which the inspection could conveniently take place. On the day suggested, I inspected the locality first the house at Ishber and then the house at Cheshmashahi. Learned counsel for the Government as well as officers instructing him, were present at the spots. The respondent was present at his house at Ishber and took me, not merely round his house, but to the Electric Sub-station and explained his case as regards the manner in which and the circumstances under which the

electric connection was extended to his house at Ishber. We then proceeded to the house at Cheshmashahi belonging to his son Bakhshi Bashir Ahmed. Bakhshi Bashir Ahmed was not then in station, but the respondent took me round and showed me the spots and the physical features which he said would establish the defence which had been set up in regard to the electric connection to the Cheshmashahi house.

A-101. After the inspection was over the respondent spoke to me about the inquiry in general and about his defending himself. He told me that he was having full reports about the manner in which the inquiry was being conducted, the questions which I was putting to the learned counsel for the Government which sought to elicit the Government's answer to the defence set up by him and in view of these features he assured me that he had the fullest confidence in my fairness and impartiality and his conviction that he would get justice at my hands. He also explained that by error or inadvertance he had been led to make some suggestions which might have indicated his want of confidence in my fairness towards him. He, however, explained this by saying that he had not carefully read through the entirety of the affidavits or statements which were prepared for being signed by him and that these reflections might have crept in without his knowledge. He added that he had subsequently gone through the petitions which he has filed and regretted that they contained these reflections. When he made these statements, I asked him straight as to why he would not participate in the inquiry and elucidate the defence which he had put forward in the replies that he had already filed. His answer was that he had made up his mind to participate in the inquiry but that for some reason which he could not explain, he would prefer appearing before me not at Srinagar but at Jammu when the Commission adjourned to the latter place for its winter sittings. I expressed great satisfaction at this change in his attitude and assured him that as far as I could, I would see to it that he was afforded every facility, first to get acquainted with all that had happened at the hearings in Srinagar and then assist him in putting forward his defence properly by affording his counsel inspection of documents called for by him, even after the office hours, if necessary, at my residence. As regards the first matter namely the matter of acquainting him with all that had transpired at the inquiry up to then, I told him that for my convenience, I had arranged to have a verbatim report of the proceedings taken in shorthand and transcribed and that I would make this transcript available to his counsel for perusal. He thanked me for these assurances of help and assured me that he would arrange to have counsel appear before me after the Commission moved to Jammu and started sitting there.

A-102. I conveyed the substance of the above conversation with the respondent to Mr. Khambatta, learned counsel for the Government. He expressed to me great satisfaction at this change in the attitude of the respondent and assured me that so far as he and the Government were concerned, they would extend the utmost co-operation to the respondent, to ensure that he was able to put forward his defence properly.

A-103. Subsequently at the request of the Government I

arranged for a local inspection of two buildings at Pahalgam which were the subject of Allegations 5 and 6. As the matters in dispute in these allegations and particularly those in Allegation 6 turned on certain physical features of the land comprised in the property, I considered that it would be useful and even necessary to have a local inspection of these two buildings. I have to add that the respondent in the reply, he had filed, had prayed that I might inspect the properties, to acquaint myself with the physical features on which he had relied. The respondent suggested that these buildings might be inspected on the 1st of September, 1966 and I accordingly proceeded to Pahalgam for this purpose. There also the respondent was present to receive me and took me round the property particularly the house at Noonawan which was the subject of Allegation 6. At the conclusion of this inspection the respondent again spoke to me about his desire and eagerness to participate in the inquiry and after repeating what all he had told me a week earlier at Srinagar, he said that he had contacted counsel at Delhi and he would appear for him at Jammu. He added that he proposed to appear personally before me on the 15th of November, 1966 and that he and his counsel would participate in the inquiry from that date onwards. While expressing my satisfaction at the arrangements that he was making for appearance before the Commission in order to defend himself, I pointed out that the sitting of the Commission at Jammu would start from the 2nd of November, 1966. The Government were likely to complete their submissions on the rest of the allegations which might remain after the sitting at Srinagar within about 3 or 4 weeks time at the most. It was possible that the inquiry would not be concluded by the 15th of November, 1966 though it might not last very much longer. I emphasized the fact that while I would appreciate his joining the inquiry and that I would value his assistance in ascertaining the facts correctly, it was necessary that he should come and participate in it before the arguments of the Government closed and I reserved orders. I also told him that there was no question of the inquiry being adjourned for enabling his counsel to prepare for the reply, as enough time had already been given and as he was himself to blame for the attitude adopted till then, it would not be just for me to further postpone the hearings to accommodate him. He expressed appreciation of the fairness of my attitude. While thus I made it clear that I would welcome his appearance and the appearance of his counsel at any time before Government concluded their submissions, I said, I would not wait after the Government closed their case for him to make his appearance. I, therefore, suggested that he might immediately get in touch with his lawyers and make arrangements for their presence at Jammu at least by the 15th of November, 1966, the date on which he promised he would personally appear before the Commission.

A-104. The last sitting of the Commission was held at Srinagar on the 6th of October, 1966 and it was then adjourned to the 2nd of November, 1966 for being held at Jammu. On the 7th of October, 1966 the respondent filed a petition at Srinagar in which he prayed that he might be granted copies of the transcript of the verbatim short hand notes taken of the proceedings from 15th of May, 1966 at Srinagar. As these notes were made only for my own use, no copies had been made but there was only one original. These notes covered nearly a thousand pages of typed matter and it would have taken more than a month to have

the copies ready for being delivered besides my having to engage a special staff for making the copy. In the circumstances, I passed an order that the transcript of the shorthand notes would be available for inspection by the respondent or his counsel at the office of the Commission at Srinagar so long as the office remained at Srinagar and at Jammu after the office moved to that place. Notwithstanding, however, that this order was communicated to the respondent, no one appeared to inspect these notes either at Srinagar or at Jammu.

A-105. Mr. Khambatta, learned counsel for the Government was present when the hearing started at Jammu and the arguments on the allegations which were unfinished at Srinagar were taken up. The arguments proceeded from day to day and just as in Srinagar the representative of the respondent attended these proceedings and took notes. On the 14th of November, 1966 this representative of the respondent came to my residence and informed me that the respondent had reached Jammu that day, but as he was feeling indisposed he was unable to present himself before the Commission the next day as he had promised at Pahalgam and conveyed to me the apologies of the respondent for not keeping his promise. I told him that no apology was needed and inquired if counsel would be appearing the next day as promised earlier. The answer was that counsel had been engaged but that he was unable to come immediately and that he would be appearing before the Commission on the 21st of November, 1966 or it might be a few days later. No counsel appeared on the 21st or on any day in that week.

A-106. However, on the 30th of November, 1966 one Mr. Achar an advocate practising in the Supreme Court at Delhi called on me at my residence and informed me that he had been engaged by the respondent to appear for him and that he would stay in Jammu for as long a time as was needed for the completion of the inquiry. I expressed great satisfaction at the respondent's making such an arrangement and assured Mr. Achar that I would make the shorthand transcript of the arguments available to him, which he might inspect them both in the office of the Commission during office hours as well as at my residence after office hours. As he told me, that there would be local counsel also to assist him, I suggested that he might depute one of them to sit in one of the rooms of the Commission's office and go through these notes of arguments. I also promised that as he proceeded to deal with each allegation, I would with the help of my own notes acquaint him with the points made in respect of the each allegation and in particular about the documents regarding which an explanation was needed by the defence. I also told him that he might take up for reply such allegations as he liked and proceed with them in such order as he found convenient. When he told me that he was likely to return to Delhi the next day, I suggested that he might ask one of his friends at the bar, who might be assisting him, to watch the proceedings from the next day onwards, so that from then on at least they might themselves have the record of the proceedings of the Commission. Mr. Achar thanked me profusely for the assistance which I had promised and told me that he would be back on the 3rd and if, however, that was not possible at the latest on the 7th of December, 1966. I repeated to him what I had stated to the

respondent at Pahalgam namely that I would hear the reply of the respondent or his counsel at any time before the Counsel for the Government completed their arguments in respect of all the allegations and if that stage was reached and I reserved orders, there was no question of reopening the inquiry and hearing any further arguments from the respondent. Learned counsel for the respondent agreed to the fairness of this suggestion and promised me that at the latest he would appear before me on the 7th. On my part I told him that having regard to the matters still remaining to be dealt with, the Government could not possibly finish their arguments before the 10th and that, therefore, he would be quite in time, if he appeared before me on the 7th. Though Mr. Achar had promised me that he would depute counsel to watch the proceedings on his behalf to appear before me from 1st of December, 1966 onwards and take notes of what transpired before me, yet no counsel appeared on the 1st or 2nd. The only person present on behalf of the respondent was again Mr. Nanda the ex-employee of the State Government who seating himself among the seats reserved for the public was watching the proceedings on behalf of the respondent and taking notes of the arguments addressed to me.

A-107. On the 3rd of December, 1966, Mr. Achar sent a telegram addressed to the Secretary regretting his inability to come here that day and stating that he would be coming on the 5th. On the 5th again a further telegram was received stating that he was unable to come here. I was not able to make out whether the second telegram meant that he would be able to come on the 7th as promised or that he would not appear before me at all. No further representation was made on behalf of the respondent during the whole of that week nor did I receive any communication from Mr. Achar or from any other counsel, that the respondent intended to appear before me to defend as originally promised. On the 12th of December, 1966 at the commencement of the proceedings, Mr. Khambatta, learned counsel for the Government intimated to me that the Government would not press their case as regards Allegation 13. This having been dropped what remained for completion was not expected to take more than 3 or 4 days. Mr. Khambatta left on the 12th, leaving Mr. Khanna to complete rest of the arguments. If the sittings had continued during that week, the case of the Government would have been completed and orders would have been reserved on Friday but I fell ill on the 12th evening and there were no sittings during the whole of that week which were resumed only on Monday the 19th of December, 1966. On Monday, when the sitting commenced Mr. Bhasin who had a subsisting Vakalat from the respondent appeared before me and stated that he had been engaged to appear for the respondent. I expressed great satisfaction at this arrangement made for the respondent defending himself, since having appeared for the respondent at earlier stages, he was acquainted with the facts of at least some of the allegations. Before I could complete what I had to say in the matter, Mr. Bhasin informed me that he had already been engaged to appear for some parties before another Commission before whom the sittings were going on day to day. As I thought that this statement was for the purpose of applying for an adjournment till Mr. Bhasin was free from his work before the other Commission, I pointed out that there was no question of any adjournment so far as

the sittings before me were concerned and that if the respondent *bona fide* desired to engage counsel and defend himself he should engage such counsel as were free to appear before me and not one whom the respondent must have known was not in a position to appear before me immediately. I also drew his attention to the matters stated earlier about the promise of his client at Pahalgam regarding his personally appearing before me on the 15th of November, 1966 and engaging a counsel to argue on his behalf and to the fact that Mr. Achar had come to me and had stated that he had been engaged but that I did not hear anything from him for nearly a fortnight. I, therefore, suggested to him that he might communicate to his client that eager and desirous as I was to have his co-operation by participating in the inquiry and putting forward his defence, this, however, could be done only if arrangements were made for counsel to appear before me before the hearing of the case of the Government concluded and I reserved orders. I repeated to him my request that he might depute some one to watch the proceedings so that the respondent might be informed of the progress of the case. I also intimated to him that having regard to what remained to be argued by the Government, the hearing before me would not take more than, 3 days and would probably conclude on Wednesday the 21st of December 1966. Mr. Bhasin promised to communicate to his client and see to it that counsel was present before the inquiry concluded. I did not hear from him till Wednesday when he made his appearance at the far end of the proceedings of that day, to inform me that his client would be appearing before me the next day. Arguments did not conclude on Wednesday as expected and there was a sitting on Thursday. I waited till 2 O'clock afternoon to see if the respondent would make his appearance but neither he nor anyone on his behalf appeared before me that day and when the learned counsel for the Government concluded his arguments in respect of all the allegations, I reserved orders in the inquiry and stated that I would be submitting my report to the Government in due course.

A-108. Later in the evening that day the Secretary received a telegram purporting to be from the respondent and his counsel Mr. Achar despatched from Delhi stating that they would be appearing before me the next morning at about 11-00 A.M. Mr. Achar appeared at the office of the Commission the next day i.e. on 23rd December, 1966 and he was informed that the hearing had been concluded and that if he wanted to meet me he could see me at my residence. Mr. Achar thereupon came to me and saw me in the presence of Mr. Khanna who had been informed about his coming to see me. Mr. Achar brought to my notice the circumstance that he tried to come the previous day but that he was unable to obtain accommodation by air and reached Jammu only that day. I stated that this was unfortunate but he had all the time from the 7th of December on which date he had promised to be present till yesterday and that if the respondent was *bona fide* he could have telephoned his counsel here to appear before me and make a request to have the reply taken up today. I added that the postponement of his appearance to the very last day and even beyond the last day appeared to me not to indicate any *bona fide* intention to participate in the inquiry and put forward his

defence, but rather as an attempt merely to prolong the proceedings as far as possible. Learned counsel thereupon withdrew.

A-109. Later that day towards the evening Mr. Achat called on me along with the respondent and told me that he had brought with him a formal petition for reopening the inquiry. The respondent himself personally pleaded that I might reopen the inquiry and hear his counsel. I reminded him of all that had transpired between us at Srinagar and Pahalgam and the way in which he had arranged things after the hearing started at Jammu. I also told him that if he was genuinely interested in defending himself, I did not expect him to have conducted the arrangements in this fashion. He gave some explanations which did not appeal to me and finally I told him that I had intimated to him not once but several times that he should arrange to get his counsel to reply to the arguments of the Government before the Government conclude their case and before I reserved orders and that notwithstanding these definite statements and warnings he had chosen the last day for his appearance and that if for some reason he was unable to be present on that day he could not legitimately complain that I did not afford him a fair opportunity to defend himself. When my attention was drawn to the fact that he had brought with him a petition praying for reopening the inquiry I intimated to him that he might file the same if he was so minded. He, however, told me that after having heard from me what all I had stated, he was not interested in filing a petition merely for the purpose of having a formal order of rejection.

A-110. This was on the 23rd of December, but evidently he changed his mind as regards the need for a formal order from me refusing his request for reopening the inquiry which had concluded. On the 30th of December, 1966 he presented a petition numbered as Miscellaneous Petition 66/1966 in which the prayer was for the re-opening of the inquiry, hear his counsel and for other incidental reliefs. It was the same petition with the same supporting affidavit as had been prepared on 23rd December, 1966. Notice of the petition was given to the Government who filed an affidavit opposing it. I heard counsel for both the parties on 9th January, 1967 and passed order on 10th January, 1967 dismissing the petition for the reason that no just cause for the re-opening of the inquiry and that the petition was not *bona fide*. A copy of this order is annexed to this report as Annexure III.

A-111. I understand that thereafter the respondent filed a petition in the High Court praying for a writ of *mandamus* to direct me to re-open the inquiry but that the same was dismissed even at the stage of admission.

A-112. From the 23rd of December, 1966 I engaged myself in the drafting of the report which I am submitting today. This completes the narrative of the proceedings of the Commission.

A-113. I shall proceed in parts II and III to discuss and deal with the "matters" or questions I and II of the Notification.

ANNEXURE I

(Vide Para A76 page 31).

PROCEEDINGS OF THE SITTING OF THE COMMISSION
HELD ON AUGUST 7, 1965 AT 1030 HOURS AND
THE DIRECTIONS MADE THEREIN

This sitting was held primarily for the purpose of determining the procedure to be followed by the Commission in conducting the final stage of the inquiry into the Transport charges as regards which all the preliminaries had been completed.

When the proceedings commenced, Mr. Khambatta, learned counsel for the Government, started making his submissions on the point of procedure which he would desire to be followed. The Commission intimated to counsel on both sides that it had prepared a note setting out its view on this matter which it would circulate to them and would like to hear their comments on the contents of the prepared note and their submissions in the light of this note. The Commission then read the prepared statement handing over at the same time copies of the note to counsel on both sides. The statement read :—

“As already stated more than once, the entire object of splitting up the allegations into connected and convenient groups and requiring the preliminaries in respect of each group to be completed earlier than others, was to ensure that regular hearings to determine the facts with a view to reach findings on the several charges could commence in respect of some even while the preliminaries were, as regards the remaining ones, being gone through. It is only such a procedure that would enable the Commission to proceed with its duties with expedition and avoid the Commission having to sit idle for considerable stretches of time. The Commission considered that this would be convenient to counsel as well. It is only necessary to recall in this connection that when the Commission made the suggestion at the first sitting of the Commission at Jammu in February, 1965, senior counsel on both sides, who were present, agreed to it as both reasonable and convenient.

The preliminaries—as would be apparent from the proceedings up to now are (1) The Government filing statements in elucidation of the several allegations listed in the notification, together with material in support thereof—material in the form of affidavits and documents. (2) A determination by the Commission as to whether the material relied on raised a *prima facie* case justifying calling on the respondent to answer the charge contained in the several allegations. (3) Calling on the respondent to answer the charges in respect of those allegations in regard to which the Commission considered a *prima facie* case was made out on the

material produced by the Government. (4) Filing of replies by the respondent, in the form of statements and affidavits with documents relied on. (5) An inspection by the respondent of the entire original files and documents filed by the Government with the Commission. (6) Disposal of petitions by the parties for the production of further documents—besides those already produced.

When this stage is reached, the charges are ripe for final hearing. In regard to the Transport group comprising 11 allegations (16, 19, 23, 24, 25, 23, 26, 27, 34, 35, 37), this stage has been reached. Petition No. 9 of 1965 filed by the respondent for production of additional documents stated to be relevant to this group of allegations having been disposed of as early as the 15th July last and orders passed thereon directing production or requiring clarificatory statements to be filed having been complied with by the Government.

The replies to the several charges in this group filed by the respondent contained prayers for orders directing the production of certain documents. The Commission with a view to speeding up the enquiry directed Government by order dated 22nd July, 1965 to state on or before 31st July, 1965 whether or not the documents referred to are with them and whether or not they were willing to produce the same. The Government have in compliance with this direction filed a chart which the Commission considers very useful. By the same order the Commission invited the respondent to file on or before 5th August, 1965 a rejoinder stating objections, if any, to the statement by the Government. No such objection has been filed and the Commission, therefore, accepts the statement filed on behalf of the Government with respect to the prayer for production of documents contained in the several replies.

In their statement filed on 31st July, 1965 the Government have prayed for orders requiring the respondents or certain others to produce certain documents. The Commission will pass orders thereon, but this need not delay the final hearing being had of the Transport group.

The Commission considers that the time has arrived for determining the procedure to be followed at the final stage of the enquiry into the facts involved in the Transport group and for the date when this should commence. The Commission is aware that this is a matter entirely for the Commission to determine, but on this, in line with the attitude which it has adopted up to now, on the several matters which have come before it, it would prefer to do so after hearing counsel.

Before, however, inviting submissions from counsel the Commission would like to make its position on certain points which it considers essential clear.

1) The hearing in respect of the Transport group should not wait for the completion of the preliminaries which have been listed earlier in respect of other allegations or be in any manner delayed on that account.

2) The date suggested while affording reasonable time to counsel for preparation, should ensure that the Commission is not kept idle for any avoidable period.

These two are as regards the date to be fixed for the commencement of the enquiry.

Next as regards the procedure :

- 1) First, we have the basic postulate that the onus of proving the charge contained in the several allegations is on the Government.
- 2) Next as to the material by which such proof could be effected. This consists at present of affidavits and documents.

Taking the affidavits first—In so far as the facts stated in the affidavits are supported by the documents filed with the Commission including the original files and records, there would be no question of the deponents being required to be called for oral examination before the Commission. But as counsel is aware, there are facts stated in some of the affidavits filed which are either not supported in terms by documents or which seek to explain why the documents are in a form which appears to run contrary to the case of the Government. In both of these cases, unless the Government are able to point to any admission by the respondent, oral evidence supported if necessary by further documents which can be tested by cross-examination would have to be furnished before the Commission can accept the facts so stated as proved. In saying this, the Commission wishes to make it clear, that it would of course be open to the Government to rely on circumstances otherwise established which with certainty point to the conclusion that their version of the facts as set out in any particular affidavit must be true. This, however, is for their counsel to decide as this bears on the quantum of evidence which they consider sufficient to establish any particular fact. It is only necessary to add that having regard to the nature of the charges, the Commission cannot accept any charge as proved merely on a balance of probabilities, but the degree of proof must be such as to induce conviction of a reasonable and acceptable degree of certainty. The above would necessarily mean that there is no question of any deponent being required to be tendered for cross-examination provided of course that it would be open to Government to let in oral evidence in further support of their case. Besides, it would be open to Government to produce fresh documents to answer or negative any particular case set up by the respondent, and in regard to these, if their genuineness is disputed and circumstances are proved justifying any suspicion on that score, the same should be established before they are accepted.

What has now been stated applies *mutatis mutandis* to the respondent. As regards him also where the documents and official files and records do not support him, or where a positive case is set up by him in explanation of the facts stated in the Allegation, statement of the case for affidavits, he cannot rest content merely with affidavits, his own or those supporting him, filed on his behalf. The onus of proving such

positive case being on him, evidence to establish the facts alleged would have to be led. Besides of course unless the respondent is content to rely merely on a submission that the Government had not discharged the burden of proof which lies on them to establish the charges, he should lead evidence to rebut the charge as in his case also, unless he is supported by documents—either official records or those whose genuineness is above question, he cannot reply merely on denials or statements in affidavits filed on his behalf. Here again the Commission desires to leave it to the respondent and his counsel to determine the quantum of evidence which he or they consider necessary—to negative the case of the Government or to prove any particular allegation of fact which he or they desire the Commission to be held established.

In this connection, the Commission would like to refer to the statement filed by the Government in response to its directions setting out matters which according to them had been established by the documents and the area of disagreement. This statement is apt to give the impression that there is little or no area of disagreement as regards the case sought to be made out by the Government, and this would not be an accurate appraisal of the situation. The Commission had hoped that if the statement was drawn with precision as to indicate what had been proved by indubitable documentary evidence—as distinguished from statements in affidavits which were not fully supported by documents and which facts had been denied by the respondent, it would be in a position to determine the oral evidence that would be necessary to substantiate those facts not supported by documents. In view, however, of the nature of the statement filed the Commission has, to avoid any further delay, decided to leave the quantum of oral evidence to be led by each side to themselves. The Commission would, of course, see to it that no unnecessary oral evidence is led by either side, unnecessary because it is either not relevant or a mere duplication intended to delay the proceedings and it would, if satisfied, that if the ends of justice or the proper elucidation of facts require that any particular witness should be examined, issue directions to that end.

With these observations the Commission invites counsel to indicate (1) the date when the final hearing should commence and (2) orders, if any, they desire to be passed to commence and proceed with the trial. The details of these may be set out in a formal petition which might be filed next week and the Commission will pass orders thereon on the 16th August”.

After listening to the statement Mr. Khambatta submitted that the standard of proof indicated by the Commission in the note was unnecessarily high and that since the report of the Commission was merely fact finding and advisory on the basis of which the Government would take further action if any, it would be sufficient if the Commission recorded a finding in respect of each of the charges that the allegation made against the respondent had or had not been sufficiently disproved. The Commission expressed its disagreement with this view and stated that unless the charge, which was a serious reflection upon the public conduct of a person in the position of a Prime Minister was clearly proved, it could not record a finding in favour of the Government.

Mr. Khambatta next drew the Commission's attention to a passage at page 12 in the published report of Mr. S. R. Das in the Kairon Enquiry. The passage dealt with the circumstances in which Mr. Das stated that he would permit oral evidence to be led and commended it for acceptance by the Commission. The Commission, however, felt that there were substantial points of difference between the proceedings in the Karion Inquiry and the one now before it and in view of these differences considered that in justice and fairness to both the parties oral evidence should at the discretion of each side be permitted to the extent indicated in the prepared note. The Commission understood that Mr. Khambatta was satisfied with the procedure indicated.

The next submission was as regards the time when the inquiry in accordance with the procedure indicated earlier should commence. Mr. Khambatta suggested that the inquiry might be commenced at as early a date as possible after the replies in respect of the charges on which answers had been called for from the respondent were filed.

Mr. Sen, learned counsel for the respondent then commenced his submissions on the prepared note. His first submission was that the Commission could not act on affidavit-evidence at all unless the deponent was subjected to cross-examination and this he submitted both as a matter of law as well as a requirement of prudence. The Commission, however, pointed out that it did not agree with this submission on either aspect and stated that it would indicate its reasons for rejecting this submission later. The reasons why the Commission rejected this submission were as follows :—

First as regards there being a legal obligation on the Commission to reject affidavit-evidence unless the deponent was tendered for cross-examination, Mr. Sen did not draw the Commission's attention to any specific provision in support of this submission either in the Jammu and Kashmir Commissions of Inquiry Act, 1962 or the rules made thereunder. Coming next to the Act itself, its section 9 empowers the Commission, "subject to rules that may be made in that behalf to regulate its own procedure" and this would mean a plenary power to decide whether affidavit-evidence shall be sufficient or whether the same should be accepted only after it was tested by cross-examination. Section 15 of the Act empowers the Government to make rules, and among the matters in respect of which rules might be made are (section 15(2)(c)—"the manner in which inquiries may be held under the Act and the procedure to be followed by the Commission in respect of the proceedings before it." Turning next to the rules, *subject* to which alone the Commission would have plenary powers under section 9, Part III of the rules which deals with the procedure does not preclude the Commission from acting on affidavit-evidence, though of course it would be open to the Commission to require oral evidence to be led when satisfied that it would be necessary properly to arrive at findings which it is called upon to record. Rule II in line with section 9 of the Act to which reference has already been made, repeats

the provision that the Commission was empowered "to regulate its procedure in respect of any matter for which no provision is made in these rules." Affidavit-evidence is obviously one type of evidence, being a statement on oath before a person empowered to administer an oath which means that the deponent can be prosecuted for perjury if the statement was deliberately false. No doubt it suffers from a certain degree of infirmity by reason of the deponent not being subjected to cross-examination, but it is nevertheless acceptable evidence and even the regular Courts are competent to decide matters before them on the basis of affidavit-evidence. It is needless to mention that all writ petitions in the High Court and in the Supreme Court are dealt with almost invariably only on the facts stated in affidavits. In view of these circumstances the Commission considered that there was no substance in the objection raised by Mr. Sen that the Commission was incompetent in law to proceed on the basis of affidavit-evidence unless the same were tested by cross-examination. It need only be added that in the Kairon Inquiry held under an Act and rules in terms identical with the Jammu and Kashmir enactment and rules already set out, Mr. S. R. Das proceeded wholly on affidavit-evidence and did not think it necessary to permit the parties to lead any oral evidence or to require any deponent of an affidavit to be tendered for cross-examination and Mr. Sen made no comment on this precedent.

The alternative submission of learned counsel that as a matter of prudence the Commission ought to require deponents of affidavits to be produced for cross-examination requires next to be considered. In the prepared note set out earlier the Commission has indicated that it was only in cases where the facts stated in an affidavit were borne out by official records whose genuineness was not successfully impeached that it would accept affidavit-evidence and in these circumstances the facts stated in these affidavits would serve merely as links to make intelligible the contents of documents. The Commission has already indicated that it would not act on statements and affidavits which ran contrary to official records or which the other proved circumstances would not establish beyond possibility of reasonable doubt. In these circumstances the Commission considers that no requirements of prudence compels it to reject facts stated in affidavits merely on the ground that the deponent has not been tendered for or subjected to cross-examination.

Subject to his submissions as regards the acceptance of facts as stated in affidavits without cross-examination, Mr. Sen submitted that he had no objection to the procedure indicated in the prepared note circulated to the parties.

Mr. Sen next addressed himself to the replications filed by the Government to the replies submitted by the respondent to the several

charges. He submitted that these should be taken off the record because (1) they were not ordered by the Commission; (2) they contained statements which were new and not supported by affidavits; (3) there was no provision in law according to which replications could be filed; and (4) they served no purpose except being an attempt to prejudice the Commission.

The Commission stated that it did not agree with these submissions. No doubt the Commission did not in terms order these replications to be filed. It directed the Government to file statement indicating in what respect there had been denials of the basic facts stated by the Government in their statements, affidavits and documents and set out what matters were in controversy. This they have done and have filed a tabular statement setting out what according to them are the facts which are not in dispute, as distinguished from those which are in controversy. The Commission considers that the replications are in supplement of this tabular statement. In so far as the replications summarise their earlier statements and the reply by the respondent, it sets out in a convenient form the matter in controversy. It reiterates the facts asserted by Government at earlier stages but the reiteration has no value because it does not proceed beyond what has already been set out. But on that account there is no justification for rejecting the replication or for excluding it from the record. In some cases, however, the Government have stated new facts in the replication. The replication being merely a pleading, the statement contained therein could not be evidence or material on which the Commission would act but it is convenient both to the Commission and it would add, also to the respondent because it gives an idea of the case of the Government in regard to particular matters especially as regards the positive case set up by the respondent in answer to certain of the allegations. For these reasons the Commission considers that the replication should remain on record as merely a pleading and not as evidence.

In the course of their replications as also in a tabular statement which the Government files setting out the points upon which there had been a contradiction and the area of disagreement the Government had prayed for an opportunity to file statements and affidavits in dis-proof of the positive case set up by the respondent in respect of certain allegations. Mr. Sen learned counsel for the respondent submitted that the Government ought not to be afforded a further opportunity to file fresh affidavits or documents as prayed for by them as that would prejudice the respondents. The Commission, however, pointed out that as already set out in the prepared statement circulated to the parties, the onus of proving any positive case set up by the respondent would be on them and they were at liberty either to prove it or to abandon it. In either event the Government should have an opportunity of answering that positive case just as the respondent has had an opportunity to dis-prove the positive case set up by the Government. Besides, it would be in the interest of all concerned, including the Commission, that the answer of the Government to the positive case set up by the respondent should be known before-hand so that there would be no surprise at later stages and each party would know the case of the other. In the

circumstances the Commission considered that the prayer of the Government for permission to file statements supported by affidavits and documents in answer to the positive case set up by the respondent in respect of some allegations as contained in the tabular statement would be allowed.

The next question was about the date when the final hearing and arguments on the allegations pertaining to the Transport group should commence. After discussion learned counsel on both sides agreed that this could conveniently start on the 6th September, 1965. The Government would possibly take about seven or eight days to complete their submissions and as the Commission desires to have a break after the 15th September, 1965 to the 26th September, 1965, the following was decided as regards to the dates of the sittings :—

The arguments on behalf of the Government would commence on the 6th September and will proceed up to the 15th September. If not completed by them, the hearing would be resumed on the 27th September. Even if the Government finished earlier, the submissions on behalf of the respondents would not commence before the 27th September. This would give the counsel for the respondent sufficient time to prepare, regard being had to their having to file replies to certain allegations and to their having to inspect documents with respect to other charges in regard to which they had already filed replies.

Certain Miscellaneous petitions which had been filed earlier were then taken up for disposal. Miscellaneous Petition No. 16 of 1965 filed by the respondent on 26-7-1965 for directing the Government to produce certain documents in regard to allegations 11, 32, and 33 was taken up first. The Government had not filed any counter or objections to this petition yet and as time was required for this purpose, the same was adjourned to be disposed of on the 16th August, the Government being directed to file a reply meanwhile.

The Government had in their tabular statement made in accordance with the directions issued on 22-7-1965 made a prayer for directing the respondent and those who had filed statements in response to notices under rule 6(b) certain documents in their possession or power. In the said directions, the respondents have been given time till 5-8-1965 to file their objections, if any, to the said prayer. No objections having been filed within that time, the Commission concluded that there was no objection to the production and expressed this view in the prepared statement read to-day. Mr. Sharma, learned counsel for the respondent, however, stated that by inadvertance he had not noticed the prayer contained in the tabular statement. In view of this statement, the Commission granted time to the respondents to file objections, if any, on or before the 10th August and stated that the prayers would be disposed of at the sitting on the 16th August.

Petition 13 of 1965 made certain allegations that some officers of the Police Department had tried to intimidate or coerce certain witnesses

as also one of the counsel in the case. The Government had filed a reply strongly repudiating these charges and stating that the allegations in the petition had been filed merely in order to prejudice the Commission. When the petition was taken up, Mr. Sharma, learned counsel for the respondent prayed that no orders need be passed on this petition and the same was agreed to.

Petition No. 15 of 1965 was one filed by the respondent complaining of mis-translation of an affidavit in Urdu filed in support of the Government case as regards Allegation 14. The Government had filed a reply substantially denying the charge made in the petition. In regard to this petition and the allegation of mistranslation contained in it, the Commission had the matter examined by its official translator as well as by other members of its staff who are well acquainted with Urdu script and language and after considering their conclusions on the matter passed an order on the petition on the 5th August, 1965 and circulated it to the parties. In the course of this order the Commission had pointed out that while the translation of the affidavit in question might not have been either full or literal, absolved the Government from the charge of trying to mislead the Commission which was the point made in petition No. 15 of 1965. Though the petition had thus been disposed of, Mr. Sharma, learned counsel for the respondent, submitted that while he would accept the order of the Commission on the petition, he would nevertheless submit that the proper course would have been for either the deponent of the affidavit being examined or that the petition writer who was the scribe of the affidavit should be examined in order to decipher the writing. The Commission did not agree with these submissions and as the matter had already been decided by its order dated 5-8-1965, considered that no further directions were necessary.

Petition 17 of 1965 was one concerned with the calling of further documents in regard to Allegation 15. The Government in their reply had stated that all the relevant documents which bore upon the order for using Nitco Tiles had already been produced before the Commission and that the other records referred to in the petition did not touch the question at issue in Allegation 15. Mr. Sharma, learned counsel for the respondent, however, submitted that by inadvertence his attention had not been drawn to the reply of the Government and desired that the petition might be disposed of on the 16th when there would be a sitting. This was agreed to by the Commission.

Petition No. 19 of 1965 was for extension of time to file replies in regard to Allegations 14, 15 and 38. No orders were necessary as regards this prayer as the replies had since been filed and had been directed to be received by the Commission.

Mr. Sharma next prayed that in regard to the replies yet to be filed some further time might be given because of certain practical difficulties he pointed out. This was opposed by Mr. Khambatta, learned counsel for the Government,² but the Commission considered that provided the proceedings were not unnecessarily delayed and that it was not merely a ruse to delay the proceedings, some reasonable

time might be granted to enable the respondent to file their replies. In this view the Commission directed that replies to Allegations 30, 4, 5, 6 and Allegations 29, 31 and 7 which were due to be filed on 9th and 10th August respectively could be filed on or before the 14th August. Mr. Sharma agreed and stated that he would do so.

In regard to the replies to the rest of the allegations there were some which were due on the 16th and some on the 17th August. There were others which were due on the 23rd August. The Commission directed that in modification of its earlier order the respondent would be at liberty to file the replies in regard to all these charges (13, 18; 2, 3, 21, 36; 17) on or before the 4th September, 1965. Mr. Sharma stated that this would give him sufficient time to prepare and file these replies.

The next sitting of the Commission would be held on the 16th August for the disposal of the business indicated earlier.

(Sd.) **N. Rajagopala Ayyangar,**

Commission of Inquiry.

ANNEXURE II*(Vide Para A 97 page 40)***MISCELLANEOUS PETITION NO. 58 OF 1966 FILED
BY SHRI BAKHSHI GHULAM MOHAMMAD****O R D E R**

This is a petition by the respondent Shri Bakhshi Ghulam Mohammad through his advocate Shri T. R. Bhasin. This was filed before the Commission on 4-7-1966 and prayed for reliefs to which reference will be made later.

Before, however, dealing with the merits of the petition it is necessary to narrate some of the matters which transpired concerning this petition. The petition was presented before the Commission at 10-30 on the morning of the 4th July, 1966. It was stated at the bar that a copy of it had been tendered to Mr. Dhar, learned counsel for Government at about 8-00 P.M. the previous day and that as the latter refused to receive the petition, a copy for being served on the respondent, was also being filed in the office of the Commission. The Commission handed over this copy to learned counsel for the Government at the commencement of the sitting on 4-7-1966.

The petition is a long one covering over 50 pages of typed matter and consequently there was no question of the Government being immediately called upon to make any submission in relation to it. It might be mentioned in passing that while dealing with an earlier petition which had been filed by Shri Bakhshi Ghulam Mohammad on the 16th June, 1966 praying for time to consult counsel about his defence in this inquiry, the Commission had by its order dated the same day stated that the inquiry would stand adjourned from the 18th June to the 4th July, 1966 when the inquiry would be resumed. This interval had been granted to Shri Bakhshi Ghulam Mohammad for the purpose of making arrangements for his defence as seemed to be the prayer which was made in Miscellaneous Petition No. 56 of 1966 filed on 15th June, 1966. Though Shri Bakhshi Ghulam Mohammad had thus all the time between the 18th June and the 3rd July, this petition was filed only on the day of the hearing so that the Commission was not in a position to deal with its merits on the 4th July as it would normally have done if the petition had been filed some time earlier. But this, of course, is a minor matter and except that the Commission has had to reserve orders on the petition till to-day, it believes that it has resulted in no real inconvenience to the parties.

When the petition was presented to the Commission on the 4th July, Mr. Bhasin, learned counsel, desired that the Commission should

immediately peruse the petition and pass orders on it and he added that his instructions were that unless the prayers in the petition were being allowed and the reliefs which he sought were being granted he would not participate in the defence but would allow the inquiry to proceed *ex-parte*. As the Commission earnestly desired that it should hear in full the defence of the respondent to the allegations made against him as it considered this as the most satisfactory way of ensuring that correct findings were reached on the several matters which were the subject of this inquiry, it was eager, to consider the reliefs prayed for in the petition and, if possible, to facilitate counsel for the defence appearing before it. With this view it suggested to Mr. Bhasin, that he might indicate briefly the prayers in the petition so that if they could be favourably considered, this possibility might be indicated even then. Learned counsel, however, persisted in saying that he would prefer the Commission going through the entirety of the petition which he said had been carefully drawn up and which he, claimed pointed out certain anomalies in the procedure which the Commission had indicated as that which it would follow. On further suggestions from the Commission, Mr. Bhasin stated that owing to the complexity of the matters involved he could not straightway summarise what precisely the petition prayed for. He stated, however, that one of the main matters which the petition sought, was a review of the direction passed by the Commission on 7-8-1965 touching the obligation of the Government to produce every deponent who had filed an affidavit in support of their case to be produced for oral examination. When this was mentioned the Commission observed that that direction had been passed after hearing the parties and represented what in its opinion was a procedure which would do complete justice between the parties. Besides, the propriety of the procedure proposed had been challenged before the courts and had survived that challenge. In the light of these considerations the Commission observed that it did not propose to depart from that procedure and that it would not compel the Government to produce every deponent for cross-examination. The Commission further explained to the learned counsel how the previous order would not hurt the respondent and that any departure from it would not really help him unless the only intention was to prolong the inquiry. Learned counsel submitted that the Commission might go through the petition carefully and then decide on this matter as well as several others which had been raised in the petition and which he was not in a position to indicate immediately. When counsel stated that unless the orders were passed on the petition, his instructions were not to appear before the Commission but allow the inquiry to proceed *ex-parte*, the Commission while expressing regret at this attitude pointed out that learned counsel might participate in the inquiry subject to his being satisfied with the orders that might ultimately be passed on the petition and that he might consider withdrawing from the inquiry after the petition was disposed of. Counsel, however, demurred to this and submitted that without favourable orders on the petition he would not continue to appear before it. The Commission indicated that it was not possible to pronounce orders on the petition immediately having regard to its length and the complexity of the issues which according to counsel required deep study and careful consideration. The Commission, however, promised to go through the petition overnight and take it up for further consideration

on 5th July, 1966. The Commission thereafter pointed out that by its order dated 16-6-1966 learned counsel for the Government had been asked to repeat the arguments on the charges in regard to which submissions had been made on the 15th, 16th and 17th June, 1966 if counsel for the respondent so desired. Mr. Bhasin, however, stated that he did not desire to have these arguments repeated and that he would not stay to hear them but would allow the inquiry to proceed *ex-parte*.

The petition was again taken up on 5th July, 1966 with Mr. Bhasin being present before the Commission. The Commission informed Mr. Bhasin that notwithstanding its best endeavour it had not been able to complete its study of the entirety of the petition though it had gathered its main contents. It thereupon directed Mr. Bhasin to proceed paragraph by paragraph of the petition and make his submissions in regard to each paragraph and set out his arguments regarding the prayers made in it. Learned counsel, however, stated even to repeated suggestions on the same lines, that he had nothing to add to the petition and that the Commission might go through the petition and pass such orders as it deemed proper. The Commission then pointed out that certain of the prayers which had been dealt with in the petition would not be granted and illustrated this by referring to :—

- (1) a review of its order dated 7-8-1965 regarding calling of deponents on behalf of the Government for oral examination ;
- (2) requiring the Prime Minister and the Home Minister of India to produce all letters which the applicant wrote to them during the period when he was the Prime Minister ;
- (3) to hear as a preliminary matter a submission that the present inquiry had been instituted *mala fide* by the present Chief Minister and certain other members of his Cabinet and that therefore, the notification appointing the Commission is invalid ;

and a few other matters. The learned counsel, however, insisted that the participation of Shri Bakhshi Ghulam Mohammad in the inquiry was dependent upon the orders on the petition which might be passed after the Commission went through it and till these orders were passed he would not appear before the Commission.

The reference by the applicant in very adulatory terms to the achievements of his own administration contrasting these with the mal-administration which is stated to prevail now (matters wholly irrelevant to this inquiry) the resuscitation of the charge of *mala fides* on the part of the ministers now in the office who are stated to have been responsible for the setting up of this Commission, the reference in terms not complimentary to the Commission, to its conduct and to the procedure it had laid down and the reference more than once to the bar of public opinion as the proper forum to judge of the conduct of the applicant taken in conjunction with the tenor of the petition and the language employed, all these gave the Commission the impression that

the application was intended merely as a piece of propaganda for public consumption and had not been filed with the genuine intention of seeking clarification of the orders passed or of the procedure prescribed, or praying for reliefs which the Commission could properly grant. The Commission, therefore, enquired of Mr. Bhasin, whether the object of the petition was as described above, but as learned counsel disclaimed the suggestion of its being a piece of propaganda and stated that he was seeking relief with the sincere intention of participating in the inquiry if satisfied that the procedure would afford him a reasonable opportunity to establish his defence, the Commission accepted this assurance and stated that it would consider and deal with all the points raised in the petition with meticulous care. Besides, when the Commission observed that if orders on the petition would lead to no immediate result, the matters stated in it could well be dealt with in the report, Mr. Bhasin submitted that the petition had been filed with the genuine object of redress in respect of the matters set out in it and that the applicant would participate in the inquiry, if his apprehensions were removed and it would be in the interest of justice that the Commission should pass orders on the petition immediately. In view of these statements, submissions and assurances the Commission stated that orders on the petition would be passed on the 11th July, 1966 and now proceeds to deal with the several matters set out in the petition.

The Commission has perused the petition very carefully and in the feeling and expectation that if the misgivings which are voiced in parts of the petition are removed the applicant would be induced to participate in the inquiry, proposes to consider and discuss every matters dealt with in the petition. This, however, is not an easy matter since the petition is diffuse, far from well drawn, repetitive and employs such a plethora of words and abundance of rhetoric that it is sometimes not possible to make out what the grievance is and what the relief is, that is sought. Notwithstanding these handicaps the Commission has tried its best to understand the petition and will be dealing with it in full detail. In doing so the Commission finds that it is not possible to set out the points which it makes and deal with them as such. This arises because of the form adopted and the phraseology used. It, therefore, proposes to deal with it by paragraph by paragraph and attempt to remove the misunderstandings which appear to pervade the entirety of the petition.

Paragraph 1 needs no comment except to observe that the applicant might be really stating the truth when he confesses that "he is involved in utter confusion" in view of the contents of the petition and believing that what he desires is to have a clear picture to be indicated to him as regards the opportunity available to him to defend himself properly and adequately, the Commission would do its best to clarify the position.

In paragraph 2, the applicant professes to summarise the mode of procedure, the burden and the standard of proof as set down by the Commission in its order dated 7-8-1965. In summarising this matter it is stated in paragraph (a) that the order referred to, puts affidavit evidence into two watertight compartments : (1) affidavits where facts

are supported by documents ; and (2) affidavits where the facts are not supported by documents or which seek to explain away documents. The Commission considers that this analysis would not be correct. Under the orders already passed as regards the procedure to be followed, it is not that affidavits are divided into two classes, but that a distinction is made between facts relied on in proof of a charge stated in affidavits which are borne out by documents whose genuineness is not successfully impeached and facts for a like purpose stated in affidavits whose acceptance depends merely upon the credibility or veracity of the deponents. It will, thus, be seen that this is very different from a distinction being made between the two classes of affidavits as is the basis of the argument which has been developed in the petition. The Commission considers that there is a vital distinction between the two sets of facts which it has set out above, because in the one case the acceptance of the fact depends upon the genuineness of the document which proves that fact and which is merely put before it in a convenient form by the affidavit which has been filed. In the other case the fact has to depend for its acceptance not on the basis of other acceptable evidence of un-impeachable integrity but on the mere circumstance that a deponent has stated it on oath. Where the fact stated in an affidavit is borne out by unimpeachable documentary evidence, it will be seen that the credibility or veracity of the witness does not come into question at all, for if the document in which that fact is stated is accepted as genuine, that is itself proof of the fact which is sought to be proved. In such a case there could be no reason for requiring the Government to tender oral evidence of a person who has stated in an affidavit the contents of a genuine document, merely because of the fact that he has made an affidavit and subject him to cross-examination. In other words it merely means that in such a case the fact is established not by the statement on oath by the deponent but by the documentary evidence or official record whose genuineness is not impeached. Under the orders passed by the Commission, where the Government seek to rely on an affidavit to prove a fact of the other type, the Commission has ruled that it will not be accepted unless the deponent is called for oral examination before it and an opportunity has been given to the respondent and other parties to whom notices have been given to cross-examine him. The commission sees a vital difference between these two types of facts as regards their probative value and considers that the order passed which proceeds on this distinction is just and calculated to protect the interest of every party before it including the applicant.

The Commission cannot appreciate what objection there could be either on grounds of justice or of law to each side being permitted to rely upon the admissions of the other or upon circumstances otherwise established pointing to the irresistible conclusion that the facts stated must be true.

It is no doubt true that on the basis of the above order and directions as to oral evidence the scope of oral evidence would be considerably reduced, but the Commission considers that this would not be at the sacrifice of any principle of justice or of law for it is based on rational principles as earlier indicated and is calculated to aid the determination of the truth besides ensuring expedition.

Sub-paragraph (c) correctly states that the Commission has ruled that the onus of proving the charges contained in the several allegations is on the Government.

Dealing next in sub-paragraph (d) with the standard of proof to establish the allegations, again the petition correctly states that the Commission had stated that it would not accept any charge as proved merely on a balance of probabilities and that the degree of proof must be such as to induce conviction of a reasonable degree of certainty. But when it proceeds to add that because of this the provisions of the Criminal Procedure Code are attracted and that the respondent is in the same position as an accused in a criminal case, the submission is incorrect. The Commission does not consider it necessary to say anything beyond this than that is merely a fact-finding body and it has no punitive powers in regard to matters flowing from its findings. In these circumstances it considers that there is no analogy before the proceedings before it and a criminal trial and would add that this type of argument was, as seen from the judgement of the Supreme Court, evidently put forward before it in the recent proceedings touching this Commission and were rejected by that court. The Commission has repeatedly stated that it laid down this standard of proof because of the position of the respondent before it and the nature of the charges which are being made against him. From this, however, it does not follow that there is an approximation to a criminal trial and that the procedures appropriate for such trials are necessarily attracted to the proceedings before it.

The Commission considers that sub-paragraph (e) proceeds upon a misapprehension. Under the orders of the Commission it would be open to the Government to produce for oral examination any person who has filed an affidavit in support of their case and not that they would be permitted to lead oral evidence of persons who had not filed affidavits. Possibly the orders of the Commission are not specific enough on this point though the Commission has no doubt in its mind that that was what was intended. Nor has the Commission any reason to believe that it was understood in any different sense by the learned counsel for the Government. In fact the Commission put it to learned counsel for the Government after this petition was filed and was assured that that was how they too understood the orders of the Commission.

There is one other matter set out in this sub-paragraph (e) which requires to be dealt with and that is as regards the right of the Government to file fresh documents—documents which they had not filed with the Commission along with their statement of case. The Commission has ruled that where any positive case was set up by the respondent as a defence to any charge the Government would be entitled to file fresh affidavits as also fresh supporting documents to rebut such positive case. The Commission considers that no reasonable objection could be taken to this procedure because the Government cannot obviously anticipate the positive case which the respondent might set up. Merely to mention an instance in regard to allegation 25, the respondent as well as Bakhshi Bashir Ahmed have set up a case that the latter had nothing to do with the firm of Nav Bharat Transporters. That, it is not

disputed, is a positive case which has been put forward. The Government were permitted to file affidavits and documents to establish, if they could, contrary to the case of the respondents that Bakhshi Bashir Ahmed was either the proprietor or a partner of Nav Bharat Transporters. The Commission considers that no principle of justice is violated by this liberty being given to the Government nor can this be said in reason to cause prejudice to the respondent. Except in cases where a positive case had been set up (and this is only in respect of about 4 out of the 36 charges) as distinct from a mere denial which is the feature of the defence in respect of most of the allegations the Government have not been permitted to tender fresh documents in evidence nor to file fresh affidavits. The complaint voiced in this sub-paragraph is, therefore, the Commission considers, without any basis.

Sub-paragraph (f) professes to summarise the effect of the above ruling as regards the mode and burden of proof. In doing so it says "though the standard of proof required is of establishing a charge beyond reasonable doubt ruling out mere balance of probabilities yet the deponents of the affidavits would not be required to be tendered for cross-examination and instead it would be permissible for the Government to let in oral evidence in further support of their case. In the case of oral evidence it is implicit that there would be a right to cross-examine. The position, therefore, is reduced to an enigma because whereas the deponent of the affidavit who is the principal witness will not be orally examined, evidence in support may be led by means of oral evidence". The Commission is unable to follow the logic of this conclusion except possibly on the footing that it is wrongly assumed that the witnesses to be examined would be other than the deponents of the affidavit. Besides, in view of what has been stated earlier as regard the distinction between the two types of facts, the Commission considers that there is really no point in the objection here made. It is on the basis of the reasoning set out earlier coupled with an assumption that Government had been given the right to produce fresh documents besides those filed with the Commission at the time of filing their statement of case that the complaint is made that the Commission has done something which is "unprecedented and wholly anomalous which would make the position of the applicant wholly unequal to the position of the accuser Government, a position wholly opposed to reason and justice and foreign to the notions of standard of proof in a criminal trial on the analogy of which the Commission has prescribed the procedure as regards to onus as well as the standard of proof." In this mass of words the Commission is unable to discover either the lack of precedents or the existence of some anomaly of which complaint is made. It would be seen that in later paragraphs of the petition the applicant himself appears to concede that where a positive case is set up even by an accused, the burden would be on him to establish it and that the prosecutor would have a right to lead evidence to rebut the particular defence like alibi but more about it latter.

The Sub-paragraph then proceeds to allege that though it was possible for the respondent to challenge the genuineness of fresh documents filed in order to negative a positive case set up by the applicant, no such challenge is possible as regards the documents originally filed by

the Government. This handicap is said to be traceable to two factors : (1) that the applicant had to file his replies even before he inspected the original files and (2) the absence of deponents of affidavits for cross-examination to challenge the genuineness of documents. The Commission considers that there is no basis for the argument that the respondents are not in a position to challenge the genuineness of documents relied on by Government. So far as the first factor is concerned, the procedure by which copies of documents annexed to the Government's statements of the case were to be handed over to the respondent and that he should thereafter file his replies and that after his reply was filed he would be at liberty to inspect all the original files which the Government filed in the office of the Commission from which the documents annexed to the affidavits were extracted, was one which had been suggested by Mr. Sen, learned counsel for the respondent and agreed to by counsel for the Government and by the Commission as being reasonable. The applicant, therefore, cannot make any grievance out of a suggestion made by him which was accepted. Nor is there any point in the suggestion that after the inspection of the files he is not in a position to challenge the genuineness of documents in the absence of the production of witnesses who could be cross-examined. In this connection it might be mentioned that in each one of the replies filed by the respondent to the several allegations in which he has been called on to file his replies, the respondent has stated that he reserves liberty to file additional statements after inspection of the files. The Commission might state that at one of the hearings Mr. Sharma, learned counsel then appearing for the respondent mooted the point about the opportunity for him to challenge the genuineness of the documents produced on behalf of the Government. The Commission then pointed out to him, that it was not necessary for him to file even an additional statement, but that he might at the stage of the final inquiry, challenge before the Commission the genuineness of any document on which reliance was placed by the Government. The Commission pointed out that if such a challenge was made the Commission would go into the question of the genuineness of the document and decide that matter before taking such document into consideration as a piece of evidence in favour of the Government. That position still stands and the Commission considers that it is an account of the counsel now appearing not being acquainted with what transpired at earlier stages of the proceedings that a point in this form is sought to be raised in this petition. The Commission, therefore, observes that there is no justification for the misgiving that the respondent would be without an opportunity to question the genuineness of documents on which reliance was being placed by the Government in support of their case.

Sub-paragraph (g) of para 2 appears to state that on the ruling of the Commission, the respondent, who is described as the accused has been called upon to prove his innocence. The Commission considers that there is no basis for this inference as it has repeatedly stated that it would be for the Government to establish beyond reasonable doubt that the allegations set out in the Notification are made out.

Sub-paragraph (h) states that the Commission has by its ruling that where the respondent sets up a positive case he should establish

it, had done something which was unprecedented. It is also stated that this was not consistent with the statement in its earlier order that the Government could rely on the admissions of the respondent or on circumstances which irresistibly pointed to the conclusion of being true. So far as this latter point is concerned it is wholly without substance because the Commission has not ruled that the respondent could not reply on the admissions made on behalf of the Government or on the circumstances in the Government case or otherwise which would irresistibly point to the conclusion that the case of the other side is not made out or that the case set up by him is true. It is also said that the Commission has laid down some quantum and type of proof for proving facts which according to the applicant is the exclusive concern of the parties. The Commission is unable to understand the basis for this complaint. It has laid down no quantum of proof except that it should be satisfied that the evidence was sufficient to prove a point nor has it laid down any type of proof except to say that facts must be established by credible evidence. This sub-paragraph further appears to complain that the Commission has committed an error in not accepting oral evidence even when the credibility of that evidence depends wholly on the veracity of the witness. The Commission has already dealt with this matter in full and does not propose to deal with it again. The point, however, made in the petition is apparently for the purpose of making it out that if it is affidavit evidence on behalf of the respondent it has to be accepted as true and that in ruling that merely because a statement is on oath its veracity would not be accepted "the Commission had disclosed a pre-possessed mind against the applicant. . . . A missile directed against the applicant." It is not easy to comprehend this accusation but possibly the explanation is in the statement that follows that the applicant has no access to the records which are in the possession of the Government. All the documents and the entire files are now before the Commission and if the respondent can pick out from these records anything which supports him, there is nothing to prevent him from relying on those documents or those portions of the files and of using them as corroboration of the veracity of the statement in his affidavits. The mere fact that the documents do not support respondent is, the Commission considers, not any justification on principle or authority to hold that the statement on oath of the respondent or of those who support him are true. Leaving aside the statement in this paragraph of the petition regarding the theory of the presumption that should be applied in these cases, which is sought to be supported by the fact that the respondent occupied a very high position in the State during the period in which he is alleged to have mis-conducted himself and contrasting it with the mis-government that is stated to have followed his exit from his position as head of the administration (matters wholly irrelevant but regarding both of which unnecessary rhetoric is expended), the Commission would point out that barring about four or five allegations, the defence of the respondent in his reply may be described as follows. The transactions themselves which are the subject of allegations are mostly not disputed and the defences raised are generally speaking :—

- (i) that the respondent has no knowledge of the transactions or that it was designed for or resulted in the pecuniary advantage of his relation or relations ;

- (ii) that in cases where knowledge of the transaction is brought home to the respondent by means of his signature, initials etc. in the official files, the defence is that he acted on the reports of officers who recommended a particular course of action and that he had no knowledge of benefitting or intention to benefit any relation of his ;
- (iii) in some cases the defence is that the matter was brought upon the memoranda, notes or recommendations of officers in charge of particular departments and that the matter was placed before the Cabinet and that he cannot be held guilty of misconduct for the Cabinet decisions having been given effect to, he having no knowledge that it would benefit any relations of his.

The Commission has summarised in general terms the defences to the majority of the allegations but this is not to be taken as representing the type of defence offered in respect of each and every charge. When defences of the type above set out are being raised, it would be obvious that it would be for the Government to establish (a) that a transaction of the type set out in the relevant allegation as notified took place ; and (b) that the transaction was to the pecuniary benefit of the particular relation or relations mentioned in the relevant allegation and (c) that such advantage was conferred either at the direction of or with the knowledge or connivance of the respondent. The Commission has already ruled that the onus of proving all the three steps which are essential to be proved before a finding in favour of Government could be recorded by the Commission is wholly on the Government. Such proof could be made either by relying on documents whose genuineness is not impeached or successfully impeached or by oral evidence of witnesses who have filed affidavits in support of the Government case and who would, therefore, be subjected to cross-examination. In the case of this position the Commission is unable to appreciate what exactly is meant by the statement in the petition that a statement on oath by a person who had held the office of the Prime Minister should be accepted in preference to the words of a subordinate officer. It is precisely for this reason and to avoid having to decide between contradicting statements both on oath in affidavits that the Commission has ruled that where a fact is sought to be established on the truth of an affidavit by a subordinate officer such officer should be produced for cross-examination before his evidence could be accepted.

The further statement that is not "a firm principle of law that the accused must establish his defence affirmatively and by adducing evidence in defence" has the Commission considers, no basis in its order of the 7th August, 1965. The Commission has not stated that the respondent must affirmatively disprove the allegation against him by adducing evidence. Unless the respondent admits any particular fact it [would, as already stated, be for the Government to establish the entirety of the case as set out in the allegation. If besides merely a denial, the respondent has a positive case, the Commission does not see any objection to his being required to satisfy it, that it is acceptable. The question whether the positive defence is merely plausible or is a little more than

that but falls short of a complete proof, is one which cannot be stated without reference to the facts of a concrete case. It is, therefore, idle to speculate as to the exact degree of acceptability which has to be made out in any particular matter. Of course, if there is something in support of a statement in an affidavit filed in defence beyond the mere *ipse dixit* of the deponent, it would be a factor that would certainly be taken into account and would greatly improve the chances of its acceptability. Without reference, therefore, to any concrete case which the applicant has in mind it is not possible to say or to rule before-hand that the defence is capable of being accepted or not. The Commission takes it that this submission has been made only with reference to those charges where a positive case has been set up by the respondent which it might be mentioned, is confined to about four charges or so. As regards the bulk of the other allegations the defences raised are of the type summarised earlier in regard to which this question of plausibility does not appear to arise.

We next go to paragraph 3 which claims to point out the anomalies inherent in the procedure prescribed by the Commission and these anomalies are set out under several sub-paragraphs. The first of them is that there was no rational basis for putting affidavit evidence into two watertight compartments. This has already been answered and as pointed out the petition proceeds upon a misunderstanding of the order which merely divides facts which are borne out by documents into one category and those which are dependent on the veracity of deponents of affidavits into another class. The Commission sees no anomaly in this classification. It is stated in sub-paragraph (ii) that genuineness of documents is assumed even though files may be tampered with or interpolated or substituted and again a complaint is made about the refusal to allow inspection before the reply was filed. This has already been answered in full and it has been pointed out how every opportunity is afforded to challenge the genuineness of documents. After all in this connection one must remember that all the replies which have been filed after the copies of the documents annexed to affidavits on which principle reliance has been placed by the Government had been handed over to the counsel for the respondent to answer which replies were filed. In none of them is an allegation made that any particular document relied on by Government is not genuine, has been interpolated or has been substituted for some other document.

Sub-paragraph (iii) is again a repetition of a matter which was set out earlier, namely that because the deponent of every affidavit is not required to be examined, no opportunity is afforded for questioning the genuineness of document. As pointed out earlier the respondent is at liberty to challenge any document on which reliance is being placed by Government and if there is any substance in the challenge, or even a well grounded suspicion of its genuineness, the document would of course be rejected. This can be done at the stage of the final hearing when the document is being relied on by counsel for the Government.

In sub-paragraph (iv) it is said that the failure to require the deponent of every affidavit to be examined is inconsistent with the standard of proof prescribed by the Commission. The Commission is

unable to appreciate the precise point that is sought to be made, but would say that having regard to what has been stated earlier there is no substance in the charge that the direction as to the examination of witnesses is inconsistent with the ruling as regards the burden of proof.

It is then stated in sub-paragraph (v) that the standard of proof prescribed by the Commission is a contradiction of terms. In support of this proposition it is stated that unless the deponent of every affidavit were orally examined and subjected to cross-examination the standard of proof laid down by the Commission would be contravened. This is clearly a repetition of sub-para (iv) and does not require to be separately dealt with.

Sub-paragraph (vi) seems to the Commission to proceed on a misunderstanding of its order dated 7-8-1965. When it stated there that the parties were at liberty to tender oral evidence, it did not mean that persons who had not sworn to affidavits already would be brought up before the Commission but that the oral evidence if any would be confined to those who had filed affidavits. The Commission has already made this clear in an earlier part of the order. Thus the entire sub-para is based upon this mis-conception which is without basis. Nothing more need be said about it.

The next anomaly that is set out in sub-para (vii) is that the Commission had in effect equated the position of the "accused" with the Government—"the accuser" in the matter of standard of proof. The point that is sought to be made here is that by ruling that the Government must prove the allegations as made out to its satisfaction, the Commission has brought in the principles of the criminal law and that it is consequently anomalous in not applying all the provisions of the Criminal Procedure Code to this inquiry. The Commission does not consider it necessary to refute this proposition which has no basis in fact or in law. From the above premises the petition proceeds to assert that as the accused was not called on to prove his innocence it would be sufficient to cause doubt on the version of the accuser and that the benefit of doubt must be given to the accused and not the accuser. As the Commission has already ruled that the Government must establish their case in full, there is no question of any failure to give the benefit of doubt to "the accused" (namely the respondent). The sub-paragraph then goes on to state that even if the accused is a criminal case invokes an 'exception' the original *onus* which is on the prosecution to prove the charge never shifts. There is nothing at variance with this, in the order of the Commission and the entire sub-paragraph which proceeds to cite several decisions to establish that the *onus* never shifts in a criminal case is consequently entirely out of place.

The next sub-paragraph deals with the degree of credence which must attach to the "positive case" which might be set up by the respondent in answer to the charge. In regard to this it is stated that the Commission must not insist upon the positive case being positively proved but must hold the charge not proved if the positive case has an element of probability. For this purpose it is submitted that the affidavits of (the respondent and any supporting affidavits of)

his must be taken as sufficient proof. The Commission has already considered the question of the "degree of proof" before which it will be satisfied that a positive defence has been established. As stated earlier it depends upon the facts of a concrete case and cannot be answered merely in theory.

These exhaust the list of the anomalies which are said to be implicit in the order of the Commission which it is stated has led to some confusion in the minds of the respondent. The Commission expects that with the clarification here offered, it would be seen that there are really no anomalies, and that the doubts entertained about a reasonable opportunity being afforded to the respondent to put forward his defence under the directions given by the Commission have been sufficiently removed.

In paragraph 4 the petition deals with the question as to the right of the Commission to determine its procedure and cites the decision in 1891 Appeal cases 173 for the proposition that though the Commission is vested with a discretion to regulate its procedure, the discretion must not be exercised according to private opinion but according to law. The Commission is unable to understand the relevancy of these statements because the order passed by the Commission to which it takes it, these observations are directed is one which accords with reason and justice and is calculated to ensure a reasonable opportunity to the respondent to make his defence. Besides the validity of the order passed by the Commission was challenged before the Courts in a writ petition filed by the respondent and has been the subject of detailed consideration by the courts and its validity and reasonableness have been upheld by the Supreme Court.

Paragraphs 5 to 7 deal with the decision of the Supreme Court. As regards the point regarding the requirement of every deponent of an affidavit to be orally examined and being subjected to cross-examination, this matter, has been the subject of elaborate examination by the High Court which decided in favour of the applicant and by the Supreme Court which reversed that decision. The substance of these paragraphs is, that though the decision of the Supreme Court might be binding, still that that decision was wrong and that if there were a higher court that decision would be reversed and that of the High Court restored. The Commission considers that in a petition filed before a tribunal which is subordinate to the Supreme Court, statements of this type impugning the correctness of a decision of the highest court in the land are inappropriate, improper and unseemly. According to the Constitution the law as laid down by the Supreme Court is the law of the land and having this Constitutional sanction behind it, there is no question of that decision or its correctness being canvassed before this tribunal. Litigants might feel aggrieved by decisions of courts and feel strongly about them, but counsel have a duty to conform to certain norms and one of them would be, the Commission takes it, not to include matter of the type which is found in these paragraphs in a petition before a subordinate court or tribunal. Of course Mr. Bhasin is at liberty outside any court or tribunal functioning in the country to express his opinion about the correctness or otherwise even of the decisions of the highest

courts. But a tribunal which is subordinate to and subject to the jurisdiction of the Supreme Court is not the proper forum for ventilating such views. That is why the Commission has been constrained to characterise these statements as inappropriate, improper and unseemly. It need hardly be added that so far as the Commission is concerned it is bound by the decision of the Supreme Court and proposes to abide and follow it.

We have next paragraph 8 which in its opening sentence deals with the implications of the Supreme Court decision which in the earlier paragraph had been treated as if it was incorrect. It is stated that "the implications are vast and grim" and that the incorrectness of this judgement and its consequences should be brought to the notice of the Government of the day and that the legislators and jurists may take note of this consequence and suitably amend the law in the way the applicant desires. This is merely a peroration which concludes the attack on the correctness of the judgement of the Supreme Court contained in paragraphs 5, 6, and 7. The rest of the paragraph appears to the Commission to be directed against itself. It reads :—

"So far as the applicant is concerned he can sense the outcome of the proceedings of the Commission due to obvious circumstances the way things have happened, and in the manner the proceedings have been conducted and are likely to be conducted. The applicant, therefore, is quite indifferent to the impending outcome. He feels much safer to place himself at the bar of the public uninhabited by the unrealities or freakishness of the law."

Bereft of the periphrasis the Commission understood it as a reflection on its proceedings and as expressive of a feeling that the applicant did not expect justice at the hands of the Commission. With a view to having this clarified the Commission enquired of Mr. Bhasin as to whether it was this that was meant. He stated that that was not so and that no reflection was meant on the proceedings of the Commission but the passage was intended only to emphasise that the procedure which had been laid down by the Commission and which had not been held to be irregular by the Supreme Court deprived the respondent of a real opportunity to defend himself. The Commission is content to accept this statement at the Bar though it is somewhat curious that words should have been used which convey a very different impression in order to express what the counsel said was the purport of the paragraph.

Paragraph 9 is concerned to demonstrate with much eloquence and a good amount of citation the function of cross-examination in sifting truth and its efficacy to achieve that purpose and how without it, probabilities cannot be tested. The Commission considers that the matter has been sufficiently discussed by it in the preceding portion of the order and as the matters set out in the several sub-paragraphs are merely repetitions or elaborations of what has already been stated in earlier paragraphs, it does not consider it necessary to deal with it sub-paragraph by sub-paragraph. The only sub-paragraph which requires to be mentioned is the last one sub-paragraph (xv). It is a criticism of

a passage in the judgement of the Supreme Court where the Court referred to the very large number of witnesses who would have to be examined in the event of the respondent's contention being upheld. The Court pointed out that if this was what was intended by the statute, "the proceedings of the Commission would be interminable". The petition goes on to state that the Supreme Court was in error in considering this question of the time that would be taken by the Commission if a particular procedure were adopted as a relevant factor for construing the statute. It further states that the Supreme Court was also in error in considering that 400 which was assumed to be the possible number of witnesses who would have to be examined if the respondent's contention was upheld as being too large a number. The petition states that even in a simple case of hurt more witnesses might have to be examined and that having regard to the nature of the allegations and the status of the respondent the Supreme Court was in error in considering the number to be too large. The Commission has nothing further to add to this criticism of the judgement of the Supreme Court than what it has stated already.

The Commission is wholly unable to understand the matter set out in paragraph 10. It proceeds on the assumption that the Commission was accepting affidavit evidence untested by cross-examination for arriving at the truth. As already stated it is doing nothing of the kind but is insisting that if the facts stated in an affidavit were not borne out by unimpeachable documentary evidence it would not be accepted unless the deponents were orally examined and subjected to cross-examination. In other words, what the Commission is mainly accepting as evidence are :—

- (a) documents whose genuineness is not successfully impeached ; and
- (b) oral evidence of witnesses who have sworn to affidavits before it, who are subjected to cross-examination.

The Commission is wholly unable to understand the relevancy of the matters set out in paragraph 11 which deals with the effect of the findings of the Commission. In places the question of cross-examination is brought in in this context but the Commission is unable to appreciate the relevancy of the matters set out in this paragraph. For instance, it is stated that "it is an irony of fate that rights which are obtainable to a workman should be denied to a person who for 16 years held the important office of the Deputy Prime Minister and the Prime Minister of the State." This is based wholly upon an incorrect appreciation of the procedure prescribed which is lawful and which, the Commission considers, is calculated to afford a reasonable and just opportunity to the respondent to offer his defence.

The Commission has the same comment to make, namely its inability to understand the relevancy of paragraph 12 in which a comparison is made between the Jammu and Kashmir Commissions of Inquiry Act, 1962 and certain other enactments.

The Commission is also unable to understand the matters set out in paragraph 13 nor their relevancy. The understanding of the Commission is that it seeks to emphasize the proposition that unless every deponent of an affidavit is required to be produced for cross-examination the requirements of justice are not satisfied. This has already been dealt with. Nor is the Commission able to understand what precisely is meant by the statement that "like virtue it (a finding which must be correct) in its own reward." The thought which is intended to be expressed by the rest of the paragraph the Commission is unable to discover.

The same observation as above the Commission is constrained to make, as regards paragraphs 14 and 15 except that it understands the last sentence in para 15 to mean that the respondent would prefer a criminal trial to the inquiry on which the Commission is now engaged. That, however, is not a matter which is relevant to this inquiry, nor is the Commission in a position to make any observations as regards that.

The Commission must also express its inability to see the relevancy of paragraph 16 which speaks of the follow-up action which might be taken subsequent to the findings if they were against the applicant.

The next paragraph is, however, one as regards which some comment must be made. It opens by saying that the findings of the Supreme Court are based on incorrect facts. This is divided into three sub-paragraphs dealing with apparently three separate matters. As regards the first, namely the statement regarding the procedure followed by the Commission, it is said that the Commission is in a better position than others to say whether this was factually incorrect. Counsel might be justified in saying that it is not accurate because as a matter of fact the reply by the respondent was directed to be filed after the Commission had decided whether a *prima facie* case had been made out. But this, however, is of no consequence at all as it is not any part of the reasoning on which the decision rests, but merely an incidental narration of certain facts and consequently does not help the petitioner in any of the submissions that he has made in this petition. The second matter which is said to be factually incorrect is that the Commission would decide whether cross-examination would be needed as and when the matter arose. Apparently what the Supreme Court had in mind was that on the orders of the Commission the Government would not be required to produce for oral examination every deponent of an affidavit but that if the Government relied on the affidavit evidence of some deponent which was not corroborated by documents in respect of the facts stated by him the Commission would require such a deponent to be examined before it and then permit cross-examination of him. Whether a witness fell within one category or the other had, of course, to be decided in each particular case when the affidavit was placed before it for acceptance and the Commission is of the view that this was precisely what the Supreme Court meant when it made the observation which is extracted in sub-paragraph (ii). So understood, it expresses correctly the factual position. Sub-paragraph (iii) proceeds on a mis-conception of what has taken place up to now which possibly is due to Mr. Bhasin, who states that he had drafted the petition, not being wholly acquainted with what had happened before the Commission up to now. It is not correct to state

that permission of the Commission had to be obtained or any specific orders passed by it before the documents which were filed in the office of the Commission could be inspected by the respondent. In order to clarify these points the Commission would now set out the procedure which, with the consent of counsel for the respondent, has been followed up to now. Along with the statement of the case Government were directed to file affidavits, if any, in support of the allegation as well as copies of the particular documents on which they intended to rely. These were to be filed in the office of the Commission after serving copies of the statement of the case and of the affidavits on which they were relying on the respondent Shri Bakhshi Ghulam Mohammad. Immediately on this being done the Commission directed its office to hand over one of the two copies of the documents which were filed in its office along with the statement of the case, to counsel for the respondent for his inspection and return. They were to be returned only after the completion of the preliminary hearing to determine whether a *prima facie* case existed justifying calling on the respondent to file his reply. The Government were besides directed to file in the office of the Commission at the time of the filing of the statement of the case etc. The entirety of the files which were relevant to each allegation in respect of which statements of case had been filed and from which the copies of the documents filed along with the statement had been taken. On the suggestion of learned counsel for the respondent, Mr. Sen who appeared before the Commission at its sitting on 7th April, 1965, the Commission under-took to examine the entirety of these files and documents which were filed in the office of the Commission with a view to ascertain whether there was anything in these files which the Commission considered might be of assistance to the defence or which would repel the case of the Government. In accordance with this suggestion the Commission examined carefully the several Government files and documents which were filed in the office of the Commission and in some cases circulated to the parties copies of those documents which in its view appeared to assist the defence. It was after consideration of these further documents in addition to the affidavits and documents filed by the Government and after hearing the submissions of counsel for the respondent who had before him copies of the documents on which the Government relied, that the Commission passed orders holding that either a *prima facie* case existed justifying the calling for an answer or rejecting the allegation in limini. After this stage was passed the respondent was called on to file his replies in respect of those allegations in regard to which the Commission held that the affidavits and documents made out a case to answer. After he had filed his reply the respondent was to be, on the orders of the Commission, and even as suggested by Mr. Khambatta at an early sitting of the Commission, at perfect liberty to inspect the original files and documents in the office of the Commission. It is this procedure that has been followed throughout, and in this connection reference may be made to the proceedings at the sitting of the Commission on 7th August, 1965 where these steps are set out. The statement, therefore, that the respondent was permitted to inspect only the documents in respect of the Transport charges but that permission of the Commission had to be granted for inspection of documents which were relevant to other charges is wholly incorrect. In this connection reference may be made to the orders passed at the sittings on 14-5-1965, 17-5-1965 and pages 4 and 5 of the proceedings on 21-5-1965. It might be pointed

out that the inspection of files which commenced to be had from May 1965 when replies to the allegations commenced to be filed, had been going on continuously from then onwards. Naturally, the documents in the Transport Group in regard to which the replies had been filed earlier were taken up for inspection in the first instance, but the same proceeded in so leisurely a fashion—at the rate of a few pages per day—that the Commission had frequently to suggest to Mr. Sharma that he should expedite the inspection by deputing a large staff for the clerical work involved. Mr. Sharma however, apologised for the slow progress and prayed for indulgence pointing out that there were practical difficulties owing to which the inspection could not go on at as rapid a rate as was desirable. He told the Commission that he could not obtain the services of more stenographers for making copies of these documents or portions of documents on which the respondents might rely. The Commission appreciating the difficulty suggested, however, that they work slightly longer hours so as to achieve some expedition. If in spite of these suggestions and directions, the respondent had not inspected any files beyond those pertaining to the Transport Group, the same has been due to the dilatoriness which has characterised the progress of the inspection and the stopping of all inspection from the first week of September, 1965 and not to the absence of any order of the Commission, or to the need to obtain any permission from it. Besides, it will be seen from the orders passed by the Commission on the 16th June, 1966 on Miscellaneous Petition No. 57 that the Commission stated :

“The Commission would direct that inspection of the files and other records which still remain to be completed may be commenced immediately and proceeded with expeditiously”.

In the circumstances there is no justification for the statement that the Commission had permitted inspection only of Transport files and not of all the files.

Paragraph 18 reverts again to the subject of the requirement of cross-examination in the light of the judgement of the Supreme Court which holds that the Commission is entitled to regulate its own procedure. There is here again a repetition of several matters which were the subject of exposition in the earlier paragraphs of the petition, but there are some observations here to which the Commission considers it necessary to advert. First, it starts by saying that it is possible for the Government to withhold files and that it is not possible for the respondent to check such a statement. Such conduct on the part of the Government is said to be facilitated by the absence of index of files in the various Departments of the Government. This is wound up with the statement reading :

“The Commission has followed the line of the least responsibility in accepting as correct what the Government states.”

The Commission considers there is no justification for this imputation if such is meant which is really meaningless. In view, however, of the assurance by counsel in regard to the passage in paragraph 8 of the

petition, which has been dealt with earlier in this order, that no imputation was intended against the Commission—an assurance which was in general terms and so apt to cover the present one also—the Commission is content to treat this as another instance where words are used which are not intended to convey what they naturally would. It should be added that up to now notwithstanding that inspection had been had of several files the Commission has not heard of any charge that any particular file has been withheld with evidence to substantiate that charge. As a matter of fact though applications were made when filing replies in respect of each allegation calling for certain additional documents besides those which had already been filed by Government, the Commission has directed the Government to produce those files and the Government has produced them except in a few cases where the existence of the files has been denied. Mr. Sharma, learned counsel for the respondent who appeared in support of these applications for production of additional evidence was content with the statement on oath by the Government officers stating that any particular file did not exist nor could the Commission do anything more unless some material was placed before it in order to show that that statement was incorrect.

In sub-paragraph 3 of this paragraph reference is made to the Das Commission and to the procedure it adopted of requiring Government to produce before it all files bearing on the allegation... That is precisely what has been done by the Government in this case and in cases where the respondent has stated that there were other files which statement is denied they have filed in support of an affidavit on the lines indicated in the sub-paragraph. The Commission has only to add that the Das Commission did not permit any cross-examination of the Government officers who filed affidavits stating that the documents filed by them were the only relevant files in existence. The Commission takes it that Mr. Das accepted the statement as true subject to its being shown by reference to the files themselves or by other documentary evidence that some papers had been withheld. In this connection the Commission would also note that before the Das Commission an application was made to require deponents of affidavits to be cross-examined and also to let in oral evidence. Both of these were rejected and that Commission proceeded wholly on documentary evidence supplemented by the evidence on oath of deponents where these were corroborated by the documents. The Commission would observe that the liberty to adduce oral evidence which was prayed for by the memorialists before the Das Commission but rejected, which, however, has now been granted to both the parties, would be an advantage to the defence beyond what even the Das Commission, which is held up as the precedent to follow, had accorded.

The prayer made in paragraph 20 is rather curious. It states that during the period 1953—1963 when the respondent was the Prime Minister of the State many confidential communications passed between him and the Prime Minister and the Home Minister of India which have a bearing on the allegations, adding that "these communications would be revealing". Based on this is the prayer that it would be necessary to summon files or confidential correspondence between the Prime Minister of Jammu and Kashmir and the Prime Minister and Home Minister of India between 1953 and 1963. In the first place the

Commission would point out that its jurisdiction is limited to the territory of the State and that it cannot in law summon any party outside the State to produce any document. In the second place it is not stated what precisely is the relevancy of the communications which the respondent claims to have had with the Prime Minister and the Home Minister of India to the matters which are the subject of inquiry before the Commission. In the absence of a statement on oath as to the relevancy of the documents it is obvious that no question of a summons to produce being considered. Lastly, it may be pointed out that it looks as if the respondent is himself in possession of copies of that correspondence and if so, there was nothing preventing him from filing those copies if he considered that they established the defence which he raised in respect of the allegations which form the subject of this inquiry. In these circumstances the Commission considers that the prayer appears to be a mere flourish without any seriousness behind it.

Again in sub-paragraph (ii) of paragraph 20 it is stated that it would be necessary to summon the minutes of Cabinet meetings (evidently of the State Council of Ministers) for the period from 1947 up-to-date. The proceedings of the meetings which were relevant to those matters which are the subject of inquiry have been filed by the Government themselves. Besides, the respondent has in some of his replies called on the Government to produce other resolutions and those which were relevant have also been produced. The Commission is unable to appreciate what bearing the minutes of the rest of the several meetings of the Cabinet could have on the matters for inquiry before it.

Paragraph 21 voices a prayer that the Government should be directed to file statistical information in relation to some matters which it is claimed would support the defence of the applicant. What the points are on which these statistics are sought, how far relevant they would be as affording a defence, would all be matters which could be considered only when a properly framed application is filed seeking such relief. It is, therefore, not possible for the Commission to say whether if an application were filed it could be ordered or not. Illustrations are given of the matters on which details of information might have to be called for. Most of them are matters in regard to which the applicant had already made prayers for further information and orders have been passed in relation to them allowing some but rejecting others on the ground that they were not relevant. The Commission, however, would state that these are matters of detail which could be urged when any particular allegation is taken up and if the Commission is persuaded that they would afford a defence, the Commission would certainly direct the Government to furnish the information. But this can only be at the stage when the inquiry is proceeding and cannot obviously be disposed of on an application such as the one now before it.

The Commission regrets its inability to understand what exactly is the purport or object of paragraph 22 which appears to impute to the Commission the charge that it "is acting on pre-conceived notions or mental pre-possessions". The Commission is unable to discern what the applicant has in mind when making this charge and would leave the paragraph at that.

Paragraph 23 reverts back to a matter which was the subject of statement in some detail in petition No. 57 dated 16-6-1966 and which was disposed of by the order passed on that date. As stated in the earlier order it is perfectly open to the applicant to offer in evidence any matter which would be relevant to the charge and to his defence and the Commission does not propose to make any comment on the defence which he might raise. The applicant states that the reply of the Governor to his communication is being examined but the Commission has obviously nothing to do with it and it would only state that it would entertain any matter which is relevant to the defence which the applicant makes to the charges levelled against him and which are the subject of inquiry before it. The Commission does not propose to go into the question as to whether the particular defence based upon disclosure of matter which transpired between the ministers might be urged before it or not as the same is for the respondent alone to decide.

The next paragraph 24 deals with the issue of *mala fides* which it says has been squarely raised by him before the Commission and was, despite the findings of the Supreme Court, "a live issue". The Commission is constrained to observe that this is a wholly untenable proposition. In the first place the Commission pointed out when certain points which were stated to be of a preliminary nature were urged before it by Mr. Sen that it held the view that it was beyond its jurisdiction to embark on an inquiry as to whether the notification constituting the Commission was itself valid or not. Upon this Mr. Sen, counsel for respondent, wisely refrained from pursuing the matter before it because the Commission felt, Mr. Sen agreed with the view expressed (vide, for instance, the proceedings of the Commission dated 11-5-1965). That was why the issue for instance as to whether the questions referred for inquiry to the Commission "was a definite matter of public importance or not" which was mentioned before the Commission as a preliminary objection, was not argued before it at all. It was obvious that in view of this circumstance that the point about *mala fides* was also not argued here. The proper forum for those questions to be raised, which went into the jurisdiction of the Government to constitute the Commission, was obviously the High Court and the Supreme Court and accordingly these matters were argued there. The Supreme Court has now held that the charge of *mala fides* was not made out. The finding is *resjudicata* not merely before the courts but also before this Tribunal in which it was raised and it cannot, therefore, be re-agitated. This is apart from the question as to whether the Commission has jurisdiction to entertain the plea at all. The Commission, therefore, considers that the prayer in paragraph 24 is wholly out of place and has to be rejected in limini.

Paragraph 25 deals with the reply to Allegation No. 1 and offers an explanation as to why the same has not been filed up to now. It sets no date which it is promised to be filed but goes on to refer to the necessity to collect data as to how several persons in the State (some gentlemen being named) and some beyond have been able to amass considerable wealth within a short period of time. If the delay in filing the reply is merely for the purpose of gathering this information on the matters set out in this paragraph, the Commission considers that the time

taken would be wholly wasted, as none of it would be material or relevant for the matter under inquiry. The Commission has already stated that it reads Question No. 1 in the notification as intimately connected with Question No. 2 therein and that the object of Question No. 1 was to find out the quantum of pecuniary advantage which had accrued to the members of the family of the respondent set out in Schedule I by reason of the abuse of power which is the subject of the allegations set out in paragraphs 2-38 of Schedule II. This is evident from the fact that Question No. 1 is repeated as Allegation No. 1 in the list of allegations in Schedule II, in which there is a note at the end reading :—

“In all the above allegations the gravamen of the charge is that Bakhshi Ghulam Mohammad abused the official positions held by him and that the members of his family or his other relatives or other persons involved in the above allegations exploited the official positions held by Bakhshi Ghulam Mohammad with his consent, knowledge or connivance, in committing the acts and concluding the transactions mentioned in the above allegations.”

It is certainly possible that there are cases of other individuals who without the qualification mentioned in the note to Schedule II being applicable or satisfied have amassed wealth within a short period of time but the circumstances in which they happened to do so or the methods adopted by them, are obviously not the subject of inquiry before this Commission and the fact that these others have amassed great wealth is, therefore, wholly irrelevant to the subject-matter of this inquiry. With these observations the Commission would close this order and would only add that it would be prepared even now to extend the time for filing the reply to Allegation No. 1 if a proper application were made in that behalf and a reasonable date suggested within which it would be filed.

As the next paragraph of the petition merely purports to summarise its preceding paragraphs, the Commission does not consider it necessary to refer to it and deal with it for it would merely result in a repetition of what has already been said. The Commission believes that it has indicated its views with sufficient clarity in respect of those matters on which clarification was sought. It has tried to explain the true position in respect of matters which are the subject of grievance voiced in the petition and it also believes that it has made it clear that the procedure indicated by it in the light of the clarification now made would convince the respondent that he will have a full, fair and reasonable opportunity for establishing his defence to the allegations made against him. The Commission has proceeded to deal in such detail with every matter raised in the petition, on the assurance of counsel that this petition was genuinely and sincerely designed to obtain clarifications on certain matters set out in it with a view to remove the apprehensions stated in it and in the expectation that if the true position were known and the misgivings based largely on a misunderstanding of the scope and effect of the orders passed as regards the procedure to be followed removed, the respondent would in line with the oral statement of

Mr. Bhasin on the 5th July, 1966, appear before the Commission and defend himself.

Before concluding it is necessary to refer to one more matter. When Mr. Khambatta's attention was drawn to this petition by the Commission on the 7th July, 1966 and to the fact that the petition had been reserved for orders to be pronounced today, Mr. Khambatta was fair enough to suggest that if the respondent decided to appear before the Tribunal and defend himself, counsel for the Government would re-argue the charges in regard to the Transport group in the presence of counsel for the respondent so as to afford them an opportunity of making a proper defence. In the light of this very fair offer the Commission expects that the respondent will decide to appear before it, as it is eager and desirous of hearing him in full before arriving at any finding in respect of the matters which are the subject of inquiry.

(Sd.) **N. Rajagopala Ayyangar,**
Commission of Inquiry.

BY ORDERS OF THE COMMISSION

Copy to :—

- (1) Counsel for the Government
- (2) Counsel for Shri Bakhshi Ghulam Mohammad.

(Sd.) **A. R. Ailawadi,**
Secretary to Commission of Inquiry.

ANNEXURE III

(Vide Para A 110 page 47).

MISCELLANEOUS PETITION NO. 66 OF 1966

Petitioner Bakhshi Ghulam Mohammad
Vs
 Government of Jammu and Kashmir

ORDER

This is a petition for the reopening of the enquiry against him by Bakhshi Ghulam Mohammad, who had deliberately refrained from appearing in the enquiry to defend himself after its resumption subsequent to the judgement of the Supreme Court, till after I reserved orders on the findings, after Government closed their case on 22nd December, 1966.

The real question for consideration in dealing with this petition is in my opinion not whether there was sufficient cause for his no-appearance on the 22nd December, but a much larger and more fundamental question, as to whether there was any intention on the part of the petitioner to participate in the enquiry and put forward his defence before me, and if the answer to this is in the negative, whether there is any justification for granting the prayer for the reopening of the enquiry which has concluded and which has been reserved for the recording of findings. I am, therefore, narrating the factual history regarding the attitude of the petitioner at different stages, as well as promises made to me to appear and defend himself which latter, I am now convinced, were never meant to be kept, as these have led me to the clear conclusion that this petition by him for reopening the inquiry for the purpose of hearing his defence is really not sincere or *Bona fide*.

To begin at the beginning, from the very commencement of the inquiry I have granted to Bakhshi Ghulam Mohammad every indulgence by way of adjournments, extension of time etc. which was prayed for by him and in the orders which I passed on those occasions I had stated that I was doing so in order that I might know his defence and have his assistance in the conduct of the inquiry. In fact from February 1965 when the inquiry commenced till September, 1965 when owing to the filing of the writ petition in the High Court and the stay of proceedings ordered by the Court, the hearings had to be adjourned *sine die* there was not a single occasion on which the time which

Mr. Sharma desired to have for complying with my direction as to filing replies etc. was not granted as desired by counsel. I should add that on several occasions I expressed great satisfaction and appreciation of the assistance I was deriving from the counsel for Bakhshi Ghulam Mohammad who participated in the inquiry.

Then came the writ petition in the High Court and thereafter the proceedings in appeal to the Supreme Court. Judgement was delivered by the Supreme Court dismissing the writ petition on the 6th May, 1966. In the course of this judgement the learned Chief Justice of India expressed the opinion that the inquiry should be concluded with as much expedition as possible. I am conscious of the fact that this did not mean a perfunctory enquiry, without hearing the defence, but the facts to be set out would show the efforts I made to ensure that the petitioner appeared before me and defended himself.

The first sitting of the Commission after the judgement of the Supreme Court was held on the 18th May, 1966. Notice of the hearing was served on counsel for Bakhshi Ghulam Mohammad and they were present at the hearing. Bakhshi Ghulam Mohammad, however, sent a telegram stating that owing to the shortness of the notice he was unable to instruct his counsel to appear and, therefore, prayed for an adjournment. A similar request was made by counsel for Bakhshi Ghulam Mohammad who appeared at the hearing on that day. I, however, pointed out that that hearing had been fixed merely for the purpose of consulting the convenience of the parties for fixing the date on which I could resume the hearings at the point at which the proceedings had to be held up owing to the writ petition in the High Court. Learned counsel who appeared for the petitioner expressed to me that in view of what I had stated at the hearing and what had been decided then, Bakhshi Ghulam Mohammad was not prejudiced by my rejection of his prayer for adjourning the sitting.

In order to give time to both parties to prepare and be ready for the final hearing, I adjourned the proceedings by nearly one month to the 15th June, 1966. Before, however, fixing the date I expressed my desire to counsel for Bakhshi Ghulam Mohammad that they might utilize this interval between then and the next hearing by resuming and completing the inspection of the original files which they had ceased to inspect after the middle of August, 1965. (By the latter date they had only finished inspection of the files relating to the allegations in the Transport group comprising allegations 16, 19, 22-27, 34, 35 and 37). I also directed learned counsel for the Government to let me know the order in which they would like the allegations to be taken up for final hearing and directed them to serve a copy of this statement on counsel for Bakhshi Ghulam Mohammad. Learned counsel for the Government filed the statement on 13th June, 1966 and served a copy on counsel for Bakhshi Ghulam Mohammad.

When the hearing commenced on 15th June, 1966 Bakhshi Ghulam Mohammad again filed a petition praying for an adjournment not to a particular date but generally and since I considered that the month's time granted from the 18th May was sufficient to enable him to

engage counsel and be ready to proceed with the hearing and as besides he had not instructed his local counsel to proceed with the inspection, I was not inclined to grant the postponement of the hearing which he prayed for. After the hearing proceeded on the 15th June, Bakhshi Ghulam Mohammad filed another petition on the 16th and in this he stated that he had to consult his senior counsel at Delhi as to the order in which the allegations had to be taken up for final hearing, and that I was not justified in proceeding to take up Allegation 16 for final hearing on the 15th June, 1966. Immediately on receipt of this petition I dictated at the open sitting my order on the petition. In it I stated that the allegations pertaining to the Transport Group were ripe and ready for hearing in September, 1965 so that with the consent of both the sides the final hearing as regards these charges was fixed for the 6th September, 1965 but that it could not take place because the petitioner obtained an order for stay from the High Court. I, therefore, pointed out that the statement that I required the Government to file really related to the charges other than those in the Transport group and though this was not explicit in the proceedings which were circulated to the parties, it was made clear at the hearing on the 18th May, 1966 and was understood properly by the counsel on either side.

As, however, I greatly desired that Bakhshi Ghulam Mohammad should participate in the inquiry and assist me by putting forward his defence, I made two directions in the order which I passed on the petition. The first was that the proceedings would stand adjourned from the next day, i.e. from 17th June, 1966 to 4th July, 1966 which would give him about three weeks which with the time already granted would, if he were so minded, be sufficient for him to engage counsel and instruct them properly. The second direction which I gave was that the learned counsel for the Government would repeat on the 4th July, when counsel for the petitioner would be present, the arguments which he addressed me on the 15th, 16th and 17th June to enable the other side to understand the points sought to be made. In the order passed on the 16th I repeated what I had said on the 18th May and desired that thereafter at least Bakhshi Ghulam Mohammad might depute some of his counsel to inspect the documents and files so as to obviate any application for adjournment on that ground later. As Bakhshi Ghulam Mohammad had in his petition spoken of his consulting counsel in Delhi, engaging them and defending himself in the inquiry, I naturally thought he meant this seriously and so was hoping that when the inquiry was resumed on the 4th July, I would have the assistance of his counsel to help me understand his defence and place before me such material as there was in support of his case.

I was, however, greatly disappointed by the fact that no counsel inspected the documents. Then when I commenced sittings on the 4th July, there was placed before me a petition of prodigious length covering over 50 pages. It was repetitive, so full of rhetoric with an exuberance of words that it was hardly possible to glean what was meant by several passages. When I suggested to Mr. Bhasin learned counsel who presented it, to place before me and argue the points raised by the petition, he declined to do so, and stated that he desired that I should read the petition myself and pass orders adding that unless

Bakhshi Ghulam Mohammad was satisfied with the orders passed and the clarifications sought, his instructions were not to participate in the inquiry.

I expressed my extreme regret at this attitude and while promising to do my best to clarify the points which he raised, suggested to learned counsel that I would take up the petition and pass orders on it later after fully considering its contents and that meanwhile learned counsel might sit at the inquiry and watch the arguments addressed by learned counsel for the Government. Mr. Bhasin declined to do even this. I thereupon posted the petition for orders to the 11th July, 1966. In view of the exhaustive discussion of every point raised in the order which I passed on that petition, I do not think it necessary to state in any detail regarding the prayers it made or their disposal.

The main point raised in the petition was that I should insist on the Government producing for oral examination every person who had sworn to an affidavit which had been filed by the Government in support of their case. This contention had been raised before me and I had rejected it by my order dated 7th August, 1965. This matter again was the subject of consideration by the courts and the Supreme Court had ultimately held that the law did not enjoin such a procedure. In the order passed on 11th July, 1966 I explained with more fullness the effect of the direction I had passed on the 7th August, 1965 and pointed out how this would not prejudice Bakhshi Ghulam Mohammad in the least and that unless his object was not so much to defend himself against the charges levelled against him but to prolong the inquiry for years together, there was really no point in requiring the Government to produce witnesses who spoke merely to the contents of documents. Besides, I stated that where facts had been stated in affidavits which were not in substance re-statements of matters contained in documents, I would not act upon those statements unless the deponents of the affidavits were orally examined and were subjected to cross-examination. I considered that this procedure which gave each party the liberty of calling such witnesses as it chose to prove facts which could not be substantiated by unimpeachable documentary evidence, was calculated to render justice between the parties besides leading to expedition.

After listening to this order when pronounced, Mr. Bhasin expressed his dissatisfaction with what he termed was the virtual rejection of the petition, and he categorically stated that in view of my refusal to modify the directions made on 7th August, 1965 regarding the requirement of every deponent of an affidavit being called for oral examination, his client would not participate in the inquiry.

As learned counsel was leaving, I suggested to him that he might depute someone to watch the proceedings on behalf of his client and take notes of the arguments so that in the event of his client changing his mind regarding participation in the inquiry he might be in a position to know the arguments adduced and the points made against him. Mr. Bhasin, however, stated that since he knew what the other side was going to say, there was no need for anybody being deputed to watch the proceedings and saying this he left.

I greatly regretted this attitude of Bakhshi Ghulam Mohammad and his counsel but I could do nothing more. There was a break in the sittings in the second half of July and they were resumed on the 1st August, 1966 which from then proceeded from day-to-day during the whole of the month. Though Mr. Bhasin had stated that there was no need for anyone to watch the proceedings on behalf of his client, Bakhshi Ghulam Mohammad, however, sent one Mr. Nanda who, I understand, was formerly in the employ of the State Government to watch the proceedings and take notes while sitting in the public gallery.

During the whole of August I did not hear from Bakhshi Ghulam Mohammad nor did any counsel on his behalf make his appearance and the sittings were continued in September and not even then. During the middle of September learned counsel for the Government suggested that it would be advantageous if I inspected the house of Bakhshi Ghulam Mohammad at Ishbar and of Bakhshi Bashir Ahmed at Chashmashahi in connection with the matters which were the subject of Allegation 32. I approved of this suggestion and had at latter addressed by the Secretary to Bakhshi Ghulam Mohammad as to whether he could make it convenient for me to inspect these two residences. Mr. Bhasin, learned counsel, replied on behalf of Bakhshi Ghulam Mohammad welcoming my inspection and thereafter I inspected these two properties. Bakhshi Ghulam Mohammad was present at his house at Ishbar to which I proceeded first. He received me and showed me round and explained to me his version as to how or why the electric lines were brought to his house. I then proceeded to Bakhshi Bashir Ahmed's house at Chashmashahi and Bakhshi Ghulam Mohammad was also there to show me round. At the conclusion of this local inspection Bakhshi Ghulam Mohammad availing himself of the opportunity to talk to me told me that he had been badly advised in not participating in the inquiry and that after reading carefully the order I had passed on 11th July, 1966, he had made up his mind to appear before me and defend himself. I told him that I welcomed this change of attitude on his part and was eager and desirous of having him participate in the enquiry and defend himself, and when he added that he was absolutely convinced of my fairness and impartiality, I conveyed my appreciation of these sentiments to which he gave expression. He further apologised to me for some statements in his petition filed on the 4th July, 1966 which sounded as if he felt he might not get justice from me. He explained that these passages had crept in inadvertently and without his knowledge and wanted me to forgive him, as he was now expressing his apologies and regret over it. I accepted his assurance and as already stated, told him that I greatly welcomed his cooperation. He then told me that while he had some personal difficulty—the nature of which I was not able to understand—in appearing before me at Srinagar, he would appear before me after the office moved to Jammu. I on my part told him that though his representative Mr. Nanda had been attending the sittings and I had been taking notes of what transpired at these sittings, still I would help him by making available to him the shorthand transcript of the notes of arguments taken by the Commission's stenographers. I said these had been taken for my use, but in view of the difficulty in which he was, though for the same he was solely to blame, these would be made

available to him so that counsel appearing for him might not be handicapped by not knowing precisely the arguments advanced by the Government. He thanked me for the assistance promised and then we parted with myself under the impression that he was sincere in his expression of desire to appear at the enquiry and defend himself.

Subsequently thereto there was another local inspection of two buildings on the 1st October, 1966 at Pahalgam. Bakhshi Ghulam Mohammad was again present to receive me and he took me round his house at Noonawan and explained to me some part of his case as regards the charge contained in Allegation 6. I, however, told him that it would be more satisfactory if instead of these casual and somewhat disjointed answers, he made his points at a sitting which I would hold, with reference to the several documents which had been filed by the Government in respect of this allegation. He said that that was his idea also, and in this connection desired to have an old sketch map showing several khasra numbers in the area filed, so that I could have a correct idea of the location of the several items. I said that I would direct that documents to be filed and that he might at the proper time make his submissions on the basis of that sketch.

At the conclusion of this local inspection Bakhshi Ghulam Mohammad again reverted to the subject of his appearance before me at Jammu. He then gave me the name of his counsel whom he had approached and added that he would also himself personally appear before me. I told him that the sittings at Jammu would commence from the 2nd November and that he should so arrange with his counsel as to be present there when the sittings commenced. As he seemed to feel that that might be too early having regard to the convenience of his counsel, I suggested that he might appear on the 7th November which would be a Monday. He, however, said he would himself appear before me, with his counsel, on the 15th and that his counsel would continue appearing for him from that date. This delay was, he explained, due to his having to go round the State on his electioneering work. I, however, told him that the appearance by his counsel must be in good time before the counsel for the Government completed their arguments and I reserved orders. I distinctly told him that after that stage there was no question of reopening the inquiry for the purpose of hearing his defence. I added that having regard to the amount of matter that still remained to be dealt with, the arguments of the Government would not finish before the 15th and that if he and his counsel appeared before me on the 15th, they would be in time. I repeated what I have stated already as regards making the shorthand transcript of the arguments available to him and further suggested that he might immediately make arrangements for proceedings with the inspection of the records in respect of allegations other than the Transport Group. He assured me that he would appear on the 15th along with his counsel and also that the appearance would be long before the Government closed their case. I had no reason to suspect that he did not intend to keep his promise, and so was eagerly hoping to have his cooperation by his placing his defence before me.

The last sitting at Srinagar was on the 6th October and on the

7th, Bakhshi Ghulam Mohammad filed a petition for the grant of a copy of the shorthand transcript of the arguments. Orders on this petition were passed on 12th October, 1966 in the course of which I pointed out that as it was not expected that the respondent and the parties would need copies of this transcript, only one copy had been prepared for my use and that as the transcript of these proceedings came to about 1000 pages, it was not possible to make copies at that stage, but that Bakhshi Ghulam Mohammad was at liberty to have inspection of this transcript at the office of the Commission so long as it was at Srinagar and then at Jammu when it moved over to the latter place.

The office of the Commission remained open at Srinagar till the 21st October, but no counsel was deputed to inspect these papers while at Srinagar. This, I consider, is some indication that the request for the copies of the transcript was really not *bona fide* as no use was made of the order for inspection which was granted. The office then moved to Jammu and sittings commenced there from 2nd November, 1966 and even after that date no counsel was deputed to inspect these papers or the records pertaining to the several allegations though even according to Bakhshi Ghulam Mohammad there was no inhabitation against his participating in the inquiry when the same was proceeded with at Jammu. No counsel appeared to watch the proceedings at Jammu either and the only person present was Mr. Nanda who has been referred to earlier.

On the 14th November, 1966 Mr. Nanda came over to my residence to inform me that Bakhshi Ghulam Mohammad had reached Jammu but that he was not in a position to appear the next day at the inquiry because of slight indisposition. He said he had come to express the apology of Bakhshi Ghulam Mohammad for his failure on his part to keep up an undertaking. I said it was hardly necessary to apologise for this and desired him to convey to Bakhshi Ghulam Mohammad my good wishes for his speedy recovery. Mr. Nanda also told me that counsel at Delhi had been approached and fixed up and that he might be coming by the 21st November. Nobody came on the 21st nor during the whole of that week and I did not hear from Bakhshi Ghulam Mohammad either as to what exactly he was proposing to do. The arguments of learned counsel for Government were, however, proceeding and they were not expected to last for more than two weeks or thereabouts. On the 30th November, 1966 which was a holiday, one Mr. Achar, an advocate practising in the Supreme Court, came and called on me at my residence. He told me that he had been engaged by Bakhshi Ghulam Mohammad to appear for him and conduct his defence. He also told me that he would be staying here for as long a time as was required to complete the hearing even if the same took two or three months. I expressed great satisfaction at counsel appearing and Bakhshi Ghulam Mohammad defending himself and promised him every cooperation in lightening his task. I informed him of the existence of the shorthand transcript of the arguments and I stated that they would be available for his inspection during office hours at the office and outside office hours, if he so desired, at my residence. I suggested to him that he might get the assistance of some members of the local bar to inspect the documents so that he might be in a position to proceed with his arguments. Besides,

I told him that though the Government had taken up the allegations in a particular order, he was free to take them in any order that was most convenient to him. Further I told him that as he was proceeding with the arguments, I would indicate to him the points on which stress was laid by the Government and of the document which required to be explained, so that he might direct his attention to those specific points. I suggested to him two alternatives : (1) To commence his arguments on such allegations on which he was ready on any day when, I said, I would desire counsel for the Government to stop, or (2) to listen to the Government till they finished, and meantime prepare his case and proceed with his arguments on the allegations in such order as he chose. He said he would consider and make his choice. I expressly told him that the Government were expected to take about a fortnight more to complete their arguments and that he must be in a position to commence his arguments either on the date of his appearance or at any rate immediately after the Government closed their case. I added that there would be no adjournment granted after the Government closed their case and that if counsel were not present at that time and orders reserved, there would be no question thereafter of the inquiry being reopened. Counsel agreed that this was fair and said that as he would be coming long before the Government closed their case, that contingency would never arise.

After thanking me profusely learned counsel left and promised to come over either on the 3rd December, and if that was not possible on the 7th if his presence at Delhi was required in connection with a case in the Supreme Court on the 5th and 6th. He accepted my suggestion to him that from the next day (1st December) onwards a practitioner would be deputed to inspect the shorthand transcript of the arguments that had proceeded so far as well as to take notes of arguments as they proceeded from then so as to obviate the need for his having to rely upon the shorthand transcript. This, however, was not done.

I was, however, hoping that he would appear on the 3rd as promised. On the 3rd December the Secretary received a telegram from Mr. Achar stating that he would be able to come only on the 5th and on the 5th another telegram in which it was said that he was unable to come. It was not clear from the second telegram as to whether it meant that he was unable to come at all or unable to come that day. I, however, proceeded under the impression that the second meaning was more likely and was expecting him here on the 7th as promised earlier. He did not appear on the 7th nor did I have any information from Bakhshi Ghulam Mohammad or any of his other counsel here, as to whether he proposed to engage counsel who would appear before the Government concluded their case and argue his case before me.

Mr. Khambatta, who had been arguing Allegation 1 from the 5th December left this place on the 12th, leaving the rest of the arguments to be continued by his junior Mr. Khanna. At that stage it appeared to me that the submissions on behalf of the Government would conclude before the end of the week and even though Mr. Nanda, representative of Bakhshi Ghulam Mohammad who was attending the proceedings every

day knew that the arguments were likely to conclude that week, no one appeared on the 12th. But from the 12th onwards during the whole of that week there were no sittings owing to my indisposition. The next sitting was held on the 19th when Mr. Khanna appearing for the Government continued his arguments on Allegation 1. What remained to be completed was merely some clarification in regard to Allegations 2, 3 and 6, the Government having dropped Allegation 13. Mr. Bhasin appeared before me on the 19th and stated that he had received a telephone message from Bakhshi Ghulam Mohammad from Baramulla instructing him to appear before me. I had hardly finished expressing my satisfaction at counsel for Bakhshi Ghulam Mohammad appearing before me, when Mr. Bhasin started saying that he was in a difficult position because he had been engaged by some of the parties to appear before another Commission of Inquiry which also was having its sittings day-to-day. I then told him that possibly the object of engaging him, knowing that he was engaged before the other Commission, could only have been in order to obtain an adjournment and if I were right in so thinking, I could only say that I was not prepared to grant any adjournment. I recounted to him the statements made to me and the assurances given by Bakhshi Ghulam Mohammad as to the engagement of counsel and their appearing before me before the Government closed their case, of Achar's meeting me and the assurances given to me by him and how I did not consider it fair on the part of Bakhshi Ghulam Mohammad to engage a lawyer who was not thought of for the purpose when he was free, but was sought to be brought in, when possibly he could not attend to the proceedings before me and then make it an excuse for applying for an adjournment for which there was no justification. I, therefore, told him that I would welcome his appearance before me subject, however, to two matters : (1) That he must appear and start arguments at least immediately after the Government concluded their arguments and before I reserved orders in the inquiry. In this connection I pointed out that having regard to what remained, the arguments on the side of the Government would not take more than a couple of days more and should most probably end on Wednesday (21st December, 1966). (2) That on no account would an adjournment be granted for the purpose of his acquainting himself with all that had transpired by inspecting the shorthand transcript or for the purpose of inspection of the documents, as regards both of which my repeated suggestions had gone unheeded. Mr. Bhasin when he left informed me that he would communicate what I said to his client and said that he would see to it that some arrangement was made for the defence case being put before me. The next appearance of counsel again of Mr. Bhasin was on Wednesday. At about 1.30 P.M. that day he sought permission to interrupt Mr. Khanna and stated that he had received a message from his client that he would be coming the next day, i.e. on Thursday. I repeated to him what I had stated on Monday, namely, that if Bakhshi Ghulam Mohammad was sincerely interested in defending himself, I expected him to have come earlier and not put in his appearance just at the time the arguments of the Government were about to finish and then apply for an adjournment to enable his counsel to prepare his case. But in any event, I said if he made his appearance before the arguments finished and before I reserved orders, I would deal with any application made by him on its merits. I added, that so far as I could see, the arguments

were certain to conclude the next day and that if counsel for the defence was not present I would close the inquiry and reserve orders. Mr. Bhasin promised to communicate what I said to his client.

The arguments concluded on Thursday at about 1.50 P.M. and no representation was made by any counsel on behalf of Bakhshi Ghulam Mohammad or by any representative of his regarding his coming there that day or his desire to appear in the inquiry. When the Government closed their case, I reserved orders and said that I would proceed to draw up my report which I would submit to Government at as early a date as possible. Late in the evening that day the Secretary received a telegram purporting to have been despatched by Bakhshi Ghulam Mohammad and Mr. Achar stating that they were coming the next day. As there was no sitting that day, Mr. Achar called at my residence and I reminded him of what had happened up to then and stated in reply to an oral request by him to reopen the inquiry that I saw no reason or justification for reopening it. Later that day, towards the evening, Bakhshi Ghulam Mohammad and Mr. Achar came together and called on me when Bakhshi Ghulam Mohammad repeated the request which Mr. Achar had made in the morning. My answer was the same and thereupon I asked him whether he was filing any formal application for reopening the inquiry. He told me that he had brought a petition supported by an affidavit. I thereupon told him that if he desired to have a reasoned order on a formal petition, he might file the petition which he had brought on which I would pass an order. He then stated that he did not think there was any necessity for a petition and that since he had known my views on the matter he saw no purpose in filing the petition and then he withdrew. I was, therefore, surprised to find that he had changed his mind for reasons best known to himself and filed the petition now under consideration prepared on the 23rd on the 30th December, 1966, which idea had, however, been abandoned that day.

I have made this long narrative of the matters that transpired almost from the beginning of the inquiry right up to today for the purpose of showing that I do not consider this application for reopening the inquiry *bona fide*. The facts stated in the affidavit in support of the petition are merely for the purpose of showing that counsel Mr. Achar was unable to come here on the 22nd and that he was able to do so only on the next day, i.e. 23rd. But the real point for consideration is not that, but the whole story as to why notwithstanding repeated assurances no effort was made to get a counsel till the very last day. I cannot also ignore the fact that though an application had been made for a copy of the shorthand transcript of the notes of the arguments of counsel on behalf of the Government and though orders were passed as early as 12th October, 1966 granting inspection of this voluminous record, no counsel was engaged to inspect them and the only explanation for this could be that Bakhshi Ghulam Mohammad was not interested in either engaging a counsel or getting his counsel to know what had been urged on behalf of the Government in regard to the charge contained in several allegations. Nor is it without significance that notwithstanding my repeated suggestions that the documents and original files filed by the Government in regard to these allegations might be got inspected by counsel, no one was instructed to do so. Nor even was any counsel

deputed even after the arguments started at Jammu to take note of the proceedings so as to acquaint counsel appearing, of the points made by Government or the observations made by me in regard to those points. It is really difficult to understand the reason, if *bona fides* were posited, why counsel should be engaged only on the last day of the hearing when obviously he could not proceed to argue the case for the defence without an adjournment of sufficient duration to enable him to know exactly what the Government had urged and the defence to it and in this connection it must be remembered that Mr. Achar who was the counsel engaged to appear on the 22nd was new to the case, not having been associated with it at any earlier stage. That was why I thought that if he attended to it at least from the 5th or 7th onwards, he might have time to pick up the case as regards some allegations and then make some progress as regards the rest as the arguments proceeded. But if he, who was new to the case, was to come and join only on the last day, there was no possibility of the defence case being heard immediately to any purpose. It is for these reasons that I consider that this application to reopen the inquiry is not *bona fide*, for I am satisfied in view of the facts which I have narrated earlier that the petitioner Bakhshi Ghulam Mohammad had never any *bona fide* intention of appearing in the inquiry or of defending himself. For this reason I consider that the petition is without merit and it is hereby rejected.

(Sd.) **N. Rajagopala Ayyangar,**

JAMMU,

Dated: January 10, 1967.

Commission of Inquiry.

REPORT

PART II

DISCUSSION AND FINDING ON

"Matter" or Question No. (i) of the Notification

"(i) The nature and extent of the assets and pecuniary resources of Bakshi Ghulam Mohammad and of the members of his family and his other relatives mentioned in part 'A' of the First Schedule hereto (a) in October, 1947, and (b) in October, 1963."

R E P O R T

PART II

REGARDING QUESTION (I) OF THE NOTIFICATION

B. 1. There are two matters to inquire into and report on which the Commission has been set up. The first of these matters runs "the nature and extent of the assets and pecuniary resources of Bakhshi Ghulam Mohammad and of the members of his family and his other relatives mentioned in part "A" of the First Schedule hereto (a) in October, 1947 and (b) in October, 1963", and this I shall deal with in this Part.

B. 2. If this "matter" were read in the light of the "matter" required to be inquired into and reported in question 2, it is obvious that an inquiry and finding in relation to the first question is really introductory to the "matter" mentioned in the second question, which proceeds on the basis that having started without much of assets and pecuniary resources in October, 1947, the respondent and the members of his family obtained vast properties within a period of 16 years mainly, if not wholly through the respondent, abusing his position or his position being exploited by these relations with his knowledge and connivance. That is how I have understood the ratio behind the two "matters" which are required to be inquired into.

B. 3. To return to question 1, the first observation to be made is that the answer to it does not involve any inquiry as to the manner in which the increase in the assets and pecuniary resources between October, 1947 and October, 1963 was brought about. The inquiry contemplated by the first matter is, therefore, only directed to the factual position as regards the financial position of the several members of his family mentioned in Part "A" of the First Schedule on the two specified dates.

B. 4. Before proceeding further it is necessary briefly to indicate the composition of the family which is set out in Part "A" of the First Schedule. The respondent Bakhshi Ghulam Mohammad was the eldest son of Bakhshi Abdul Gaffar and he had five brothers, Ghulam Nabi, Ali Mohammad, Wali Mohammad, Abdul Majid and Abdul Hamid. The family of Bakhshi Ghulam Mohammad consisted of his wife Mst. Hajra Begum (and from March, 1963 also of his 2nd wife Begum Khurshid Jalal-ud-Din), his son Bashir Ahmed and daughter Shamah Mir. Bashir Ahmed through his wife Yasmin Bakhshi was the father of two daughters while Shamah Mir who married Mir Nassarullah had three daughters and a son. Ghulam Nabi had five sons and Ali Mohammad two. Abdul Majid had two sons and two daughters while Abdul Hamid had three sons. Besides this agnatic group, the relations listed in part "A" included the two sons of Qadir Khan brother

of Bakhshi Ghulam Mohammad's mother and their families. Also the issue of Bakhshi Sanaullah brother of respondent's father Abdul Gaffar. The total number of the relations of Bakhshi Ghulam Mohammad who are listed in part "A" and as regards whose assets the inquiry into the matter set out in the first question has to be conducted, is 49. (For details vide the Notification set out on page 1 supra)

B. 5. Before proceeding further there is one circumstance to which it is necessary to draw attention and that is that though the respondent had been served with a copy of the statement of the case and was handed over the documents etc. filed in respect of Allegation No. 1 in which the matters which are subject of the inquiry in this first question were dealt with, no reply has been filed by him though from time to time, the time for filing the reply was extended. The other members of the family to whom also notices were issued under Rule 6(1)(a) have adopted the same attitude. I have, therefore, to proceed on the basis of the evidence afforded by the documents produced on behalf of the Government. But in view of the nature of these documents I have no doubt, what-so-ever, that the findings I would be recording would, if anything, err in favour of the respondent and I am fortified in this conclusion because I have taken into account only the minimum values of the several properties and as regards most of them they are based either on registered sale deeds evidencing the purchase of properties or on the statements by the respective owners themselves as regards their values. In the case of immovable property I have taken their value as reflected in the sale deeds including in the same only the cost of the stamps, as these have to be borne normally by the purchaser.

B. 6. It was stated that the family of Bakhshi Ghulam Mohammad and his relatives as set out in part "A" of the Schedule 1 of the Notification were men of very modest means in the year 1947. Bakhshi Abdul Gaffar, father of the respondent, is stated to have died in or about 1947, leaving the six sons whom I have named earlier. In 1947 Bakhshi Ghulam Mohammad and his brothers—excepting Abdul Hamid the last brother—were carrying on a business in furs in the name of Bakhshi and Company, Srinagar. Bakhshi Ghulam Mohammad appears to have taken a prominent part in the business for we find that on the 6th of October, 1945 he as the proprietor of "Bakhshi and Company", Srinagar entered into an agreement with Pandit Brothers of New Delhi for the sale by the latter of the furs supplied by him (Document No. 1). Though under the terms of the agreement Pandit Brothers were to get as their commission only a percentage of the net profits of Bakhshi and Company, this mode of computing their remuneration was dropped at an early date and Pandit Brothers were remunerated at the rate of a 10% commission on major sales *i.e.* sales of major articles and a 7% commission on minor articles. The books of account of Pandit Brother which have been produced show that furs were supplied on a fairly large scale till February, 1948 and then their supply tapered off to practically nothing by the end of 1948. It is to be noticed that Bakhshi Ghulam Mohammad became the Deputy Prime Minister of the State in October, 1947 and evidently because of this, this joint venture of the family was brought to a close. M/s Pandit Brothers who were summoned to produce the original ledgers and day books did so and

on inspection, it is found that from 24th October, 1945 when the despatch of furs to them started till the end of June, 1948 *i.e.* for a period of over 2½ years, the total value of the goods sold through them amounted to Rs. 76,515/- and deducting the agency commission, the net amount which was received by Bakhshi and Company was a little over sixty-nine thousand rupees, or on the average an annual turn-over of about Rs. 28,000/-. Under clause 3 of the agreement dated 6th October, 1945 (Document No. 1) Bakhshi and Company, Srinagar undertook to lend the service of a competent man who would look after the stocks, sales and display of the goods supplied by them. It is seen from the entries in the ledgers and day books of the Pandit Brothers that the person so deputed and to whom the moneys were being paid by them from time to time as the price of the goods sold by them, was Abdul Majid. I am mentioning this because as many as 11 of the 37 allegations (2 to 38) charge the respondent with having unduly favoured Abdul Majid and his wife and son by abusing his official position. Bakhshi and Company appears to have included as its members besides the respondent himself, his brothers Ghulam Nabi, Ali Mohammad, Wali Mohammad and Abdul Majid and his paternal cousin Ghulam Hussain. Assuming the profit in the fur trade to be about 30% on the annual turn over of about 28,000/- this would mean a profit of about Rs. 8,000/- a year. This represented the income of the respondent, his four brothers Ghulam Nabi, Ali Mohammad, Wali Mohammad and Abdul Majid and his cousin Ghulam Hussain. Besides this, the brother Abdul Hamid was at this date in Government service as an Inspector in the Agriculture Department. His salary at this date was Rs. 48/- p.m. The maternal cousin Abdul Rashid was also in Government service as a clerk in the Civil Supplies Department on a salary of Rs. 50/- p.m. The total income, therefore, of this entire family consisting his brothers, his paternal and maternal cousins which had on that date about 40 members *i.e.* including the wives and children was about Rs. 800/- p.m.

B. 7. That this estimate is correct is corroborated by the evidence that we have in the statements on oath made in or about November, 1948 by the several members of the family who declared their income, when they had to make their declarations in applications to draw their rations. Document 3 is the declaration of Ghulam Nabi dated 25th November, 1948 made to the Civil Supplies Department. In this declaration Ghulam Nabi stated that his family consisted of 20 members (including his younger brother Abdul Majid and his wife who were then apparently living with him) and that his income was about Rs. 200 per month. Ghulam Nabi then resided at 40/1 Khankahi Sokhta. Bakhshi Ali Mohammad another brother of the respondent who was then residing at 94 Mohalla Khanda Bhawan in his declaration (Document 4) stated that his family consisted of his wife, two daughters and a servant and that his monthly income was Rs. 75 p.m. from business. Bakhshi Wali Mohammad made the declaration which is found recorded in Document 5. He was residing 40/2 Khankahi Sokhta next to Ghulam Nabi. He gave his monthly income as less than Rs. 100 p.m., the source being stated to be business. Bakhshi Abdul Hamid who then lived in 34/2 Kolipura gave his income as Rs. 48 p.m. from Government service. Bakhshi Abdul Rashid the maternal cousin then resided also at Khankahi Sokhta apparently next to the place where

Ghulam Nabi was residing at this bore door No. 41. Abdul Rashid had left Government service in 1948 when he was drawing a pay of Rs. 50 p.m. and he stated he was in business. He gave his income in the declaration (Document 7) as Rs. 100 p.m. Bakhshi Ghulam Hussain the paternal cousin stated that he was in Government service and was drawing a monthly salary of Rs. 120 p. m. (Document 8). The total of these figures of the income which were claimed to have been received by the several members of the family who made these declarations in documents 3 to 8 would come to about Rs. 650/- p.m. This of course would exclude the income which at that date the respondent would have received as the Deputy Prime Minister. Document 9 which is a reply by the Income Tax Officer to a letter addressed to him by the officers who conducted the investigation in connection with the matters concerned in this inquiry shows that before 1947 *i.e.* Assessment year 1947-48—none of the members of the family were assessed to Income Tax.

B. 8. This being the income of the family in or about October, 1947 what remains for consideration is the extent and value of the immovable properties owned by the several members of the family set out in part "A" in October, 1947. The respondent and his brothers Ghulam Nabi, Ali Mohammad, Wali Mohammad and Abdul Majid appear to have jointly owned a three storeyed house measuring 20' x 20'-4, at Khankahi Sokhta. In this connection, reference has to be made to an application made by Bakhshi Ghulam Nabi on behalf of himself and his other joint owners to the Municipal authorities for the demolition and reconstruction of this family house at Khankahi Sokhta. This was in December, 1940. The only evidence as to the value of the house after reconstruction is in the affidavit of one Madhoo Ram Gigoo who estimates the cost of the construction according to the rates then prevalent at about Rs. 1,500/-. In the absence of any more satisfactory evidence or any contradiction of this by the respondent and in view of the figure being reasonable having regard to the size of the house, considered in the light of the value of houses disclosed by purchases to be referred to, and as very much does not turn on the precise valuation of this property, I am accepting this figure as correct. Abdul Majid the other brother of the respondent is shown to have purchased a property at Safa Kadal for Rs. 600/-. It is, however, seen from the document of sale (Document 11) that Abdul Majid is described as the adopted son of the vendor which might be some indication that the property might have been worth a little more than the ostensible sale price. The paternal cousin Ghulam Hussain is shown to have purchased a 3 storeyed house at Tengapora, Nawakadal in 1944 (Document 12) for Rs. 1,800/-. Besides, Abdul Rashid and his brother Ghulam Mohammad appear to have owned a house at Khankahi Sokhta, the deed of purchase is not available, but the value of this property is stated in the affidavit of Abdul Salam Gadyari to be worth after reconstruction four thousand rupees to five thousand rupees. These exhaust the immovable properties owned by the respondent and his family. There is nothing to indicate that these persons owned any moveable properties and this is also unlikely, seeing the income they were deriving and the immovable properties they possessed.

B. 9. The net result of the above may now be summarised. In or about October, 1947 all the members of the family put together had an income of about Rs. 800 p.m. or thereabouts. The total immovable property owned by them could not have exceeded Rs. 10,000/- which is the total value of the 5 items described earlier. The only business in which the members of the family seem to have been engaged is the dealings in furs which was carried on in the name of Bakhshi and Company, Srinagar. Having regard to the number of members in the family, the income received would hardly have been sufficient to keep the family in comfort or at the most just that. This answers the first part of question No. 1.

B. 10. I shall now proceed to estimate "the properties, assets and pecuniary resources of the family in October, 1963" when the respondent relinquished his office as Prime Minister of the State. Before dealing with this, however, it is necessary to repeat that in making this estimate, the manner in which the properties or assets were acquired, as to whether this was by legitimate business activities or by the abuse of power or other act of misconduct on the part of the respondent is wholly immaterial. What is required to be answered by this part of "matter" No. 1 is merely the factual position as regards the state of assets of the family on the date when the respondent ceased to be the Prime Minister of the State.

B. 11. In connection with this estimate, the Government have filed tabular statements setting out the several types of assets of the family, separating them into groups constituting each separate unit. For convenience of understanding, I propose to follow the manner in which these assets have been classified and grouped in the tabular statements filed by the Government in answering this question.

BAKHSHI GHULAM MOHAMMAD AND HIS FAMILY

BRANCH I

B-12. Taking the first group of Bakhshi Ghulam Mohammad and his family, this comprises the individuals named as items 1 to 11 in part "A" of Schedule I. They are the respondent himself and his wife, son and daughter, his daughter-in-law, and his grand children by his son and daughter.

B-13. (I) *Residential Buildings* :—The first set of assets to be considered are the residential buildings owned by the members of this group. Bakhshi Ghulam Mohammad purchased on 20th August, 1963 a piece of land at Ishber with a small construction on it for Rs. 41,432/-. On this property, a building valued at Rs. 40,000/- was constructed by him. The cost of the building is that which the respondent himself declared as its value under a fire policy which he took out from the Oriental fire and General Insurance Company in January, 1964. Thus the total value of his residential property is Rs. 81,432/-.

B-14. Bakhshi Bashir Ahmed and his sister Shamah Mir purchased a land with a building thereon at Noonawan, Pahalgam from Kanwar Reshi Singh by a registered sale deed dated 1st of October, 1958 for Rs. 15,000/- besides stamp and registration charges of Rs. 216/-. Pausing here I might add that in the rest of this part of the report, the cost of stamp and registration charges have been included in the price specified in the several sale deeds as the value of the property. The land originally purchased, as seen from the sale deed, was of the extent of 20 kanals and 17 marlas. But an additional 32 kanals and 5 marlas of land are stated to have been encroached thereon, the value of the land thus encroached has been valued estimating it on the same basis as the price of the land purchased under the sale deed of 1958 at Rs. 28,046/-. I am, however, not taking the value of this additional land into account in view of the respondent's disclaimer of all title to the excess (vide discussion in regard to this when considering the charge in Allegation 6 page infra). The house originally on the land purchased was extended and new constructions erected in 1961-62 so that we now have a two storeyed house with gardens laid etc. The value of the new building as it now exists has been estimated at Rs. 87,000/- by the Assistant Engineer of the P.W. Department. I have myself seen the house at the time of local inspection and I do not consider that the house could be worth anything less than Rs. 80,000/-. The total value of the house and land, taking into account only the land, originally purchased, would be about Rs. 95,000/-.

B-15. Bashir Ahmed and his sister also jointly owned a house at Sonawar Bagh at Srinagar. The land on which the house stands together with the constructions that were on it which were said to be really worthless and dilapidated were purchased in 1954 in the name of Ghulam Nabi for Rs. 20,000/-. The free hold in the land vests in the Cantonment authorities at Badamigbagh and the land is held under lease for a period of 20 years subject to the payment of compensation for the value of structures on the property in the event of the lease not being renewed. At the time of the purchase the building was being let to the Military authorities for residential and office purposes at a rent of Rs. 300/-. Based on this rental the Government have suggested that the value of the property even when purchased was at least Rs. 50,000/-. The circumstances leading to the purchase of this property have been characterised by Government as improper and forms the subject of the charge in Allegation 7. I have, however, held the charge not established. I have also held that the property was not purchased at an under-value (vide page.....infra). I should add that if the land had to be valued in 1963, I would have held that having regard to its situation it was worth at least Rs. 4,000/- per kanal—taking into account the circumstances that it is a terminable lease— but which would have to be renewed unless compensation for the value of the structures were paid. At this price the value of the land alone would be over Rs. 1½ lakhs.

B-16. Several houses were constructed on this land after its purchase by the several members of the family. The constructions were erected on this land in 1958-61 on which the same stood with a sizeable extent of vacant land for each, were partitioned between the several members under a registered deed in May, 1961 (vide Document 31 in

Allegation 8). The area of the land that fell to the share of Bashir Ahmed and Shamah Mir jointly under this partition is 19 kanals 9 marlas and 126 Sq. Ft. and the value of the land taking into account the total value of the land at Rs. 20,000/- would come to approximately Rs. 10,000/-. Besides he is stated in this deed to have "recently" purchased 1 kanal 4 marlas and 105 Sq. Ft. of land. The sale deed is not available, but I would not be wrong in taking its value at Rs. 5,000/- having regard to the value of the land in 1960-61. The buildings constructed on the land which were jointly owned by Bakhshi Bashir Ahmed and Shamah Mir together, with the furniture therein was insured by Bakhshi Bashir Ahmed with the Ruby Insurance Company for Rs. 3,00,000/-, Rs. 2,75,000/- representing the value of the building and Rs. 25,000/- of the furniture. As the values have been those put on them by the owners themselves, there is no question of their being excessive. The total value of this item of land, buildings and furniture would therefore, come to Rs. 3,15,000/-.

B-17. The next item of residential property owned by Bakhshi Bashir Ahmed were plots Nos. 34 and 35 in Gandhi Nagar, Jammu which were allotted to him in February-March, 1961. The total extent of the land is 2,000 Sq. Ft. The market value of these two plots on the date of the allotment has been estimated by the Government at Rs. 24,000/-. This is based upon the average price obtained when several plots in Gandhi Nagar were put up for auction in May, 1961. As many as 34 plots were put up for auction on that occasion and except one plot which was sold for Rs. 9,775/-, the others fetched from Rs. 10,000/- to Rs. 17,000/-. I do not, therefore, consider that the estimate of Rs. 12,000/- per plot made by the Government having in view the situation of the plots in question as any over-statement. On these lands Bakhshi Bashir Ahmed has constructed a house which has been estimated by the Assistant Engineer P. W. Department at Rs. 1,00,000/-. I do not consider that this is any way wide of the mark, since I have seen the house, though only from outside. The total value of the house and building would be Rs. 1,24,000/-.

B-18. Mst. Yasmin Bakhshi wife of Bakhshi Bashir Ahmed purchased by a deed dated 27th June, 1962, 21 kanals of land for Rs. 21,237/- (including stamps and registration charges) from Her Highness the Maharani, wife of the then Sadar-i-Riyasat. On this a house has been constructed which in a policy of insurance effected with the Ruby General Insurance Company, has been valued by the owner at Rs. 45,000/-. The total value of the house and the land would, therefore, come to Rs. 66,237/-. Besides this land, the Maharani gifted to Mst. Yasmin Bakhshi 25 kanals of land which adjoins the property purchased by a deed of the same date. The value of this gifted property has been put by the Government at Rs. 25,000/- valuing it at the same rate per kanal as the land purchased. The total of the residential buildings and houses owned by the respondent and his son and daughter would, therefore, come to Rs. 7,06,669/-.

B-19. (2) Commercial Buildings :—We next come to the commercial buildings owned by this group. First we have a building which

is under lease to the India Coffee House at the Residency Road at Srinagar owned by Mst. Hajra Begum wife of the respondent. This building has been acquired by the lady from Abdul Majid under a registered deed which is styled a partition. This building has been insured against fire risk with the Ruby Insurance Company, Srinagar by a policy taken out in 1963 where its value is declared as Rs. 80,000/- (vide Policy No. 241046 A of 1963). Next we have Motor Work Shop with machinery installed in it also at the Residency Road, Srinagar owned jointly by Bakhshi Bashir Ahmed and his sister Shamah Mir. This workshop was constructed on a piece of vacant land. Even ignoring the value of the land the constructions have been valued at Rs. 4,75,000/-, this being based upon the declaration by Bakhshi Bashir Ahmed in a fire policy which he took out in 1963 from the Ruby General Insurance Company (Policy No. 2,25,271 of 1963).

B-20. Bakhshi Bashir Ahmed and his sister also owned another building used as the garages, Show Room and Office etc. of the Fair Deal Motors at Residency Road, Srinagar. These buildings were erected by Bakhshi Bashir Ahmed. Again ignoring the value of the land, the buildings have been valued at Rs. 2,00,000/- being based on his own valuation in a fire policy which he took out in 1963 also from the Ruby General Insurance Company (vide Policy No. 225136 of 1963). The total value of these commercial buildings, therefore, comes to Rs. 7,55,000/-.

B-21. (3) *Vacant Plots of Buildings Land* :— The next type of property owned by this group consists of plots of vacant land fit for building purposes. The respondent Bakhshi Ghulam Mohammad acquired by purchase from the City Improvement Trust Board, Bangalore a plot of land measuring 80x120 Sq Ft for which he has made a payment of Rs. 18,136/- by a demand draft dated 28th June, 1960 (vide affidavit of Mr. B. S. Hanuman, Chairman City Improvement Trust Bangalore). Besides, he also acquired a plot of land in Ferozpora, Tehsil Baramulla by a registered deed of sale dated 25th September, 1963*. The area of this plot is 4 kanals and 14 marlas and the price paid as per the sale deed is Rs. 2,042/-.

B-22. Coming next to Bakhshi Bashir Ahmed he owns a quite number of plots. First (1) a plot of land at village Chak Raju in Tehsil Kathua of an extent of 39 kanals and 2 marlas purchased for Rs. 12,779/- as per two registered sale deeds of February, 1963 (2) plots of land in village Ashtal at Srinagar purchased in May, 1961 from tiller owners of an extent of 35 kanals and 13 marlas. The total purchase price paid as per the 14 deeds of sale under which they were purchased, all bearing the same date 4th May, 1961, comes to about Rs. 36,000/-.

B-23. The Girdhawari as well as the Revenue Records of Ashtal village show that besides this extent acquired by purchase Bakhshi Bashir

*Though Government have filed a photostat of all the deeds, I am not setting out their registration numbers since I consider the same unnecessary.

Ahmed was also in possession of and was cultivating 12 kanals and 2 marlas of land which adjoin and is contiguous to the lands purchased by him. The value of this area of land based upon the rate per kanal paid for the adjoining lands comes to about Rs. 18,000/-. I have taken this into account for computing the assets on 9th October, 1963 because it is stated by Abdul Majid that these lands came into the occupation of the vendee at the same time as he occupied the purchased lands. Besides this extent of land, the Girdhawari further shows that an extent of 34 kanals and 19 marlas which were shown in the records as Nallahs and Canals had been filled up and were under cultivation by Bakhshi Bashir Ahmed and his uncle Bakhshi Abdul Majid. As, however, it was not clear from the record whether this encroachment on the Canals and their filling up had taken place and had become complete by October, 1963. I am not taking the value of these filled up lands into account for computing the total assets held by Bakhshi Bashir Ahmed and Abdul Majid. I have only to add that by 1965 all the Canals had been filled up and the firm land thus obtained had begun to be put to agricultural uses by the uncle and nephew (vide the detailed discussion regarding this when dealing with the charge in Allegation 3 vid page.....).

B-24. (3) A plot of land 7 Bighas and 15 Biswas in extent was purchased by Bakhshi Bashir Ahmed in June, 1958 in village Mehrauli near Delhi for Rs. 35,391/-. A few months later at the end of October, 1958 another plot of land in the same area bearing Khasra Nos. 274 and 224, he purchased on 31st October, 1958 for Rs. 16,056-50 NP and on the same date another extent of 5 Bighas and 18 Biswas was purchased by him for Rs. 26,106-50 NP under a registered sale deed. A further plot of land bearing Khasra Nos. 276 and 231 was purchased in village Adchini Mehrauli under a registered sale deed for Rs. 34,180/- dated 17th November, 1958. The total value of these purchases of vacant plots of land comes to Rs. 1,98,691/-.

B-25. (4) *Investment in Business* :—The next head of assets consists of investments by the members of the family in the business concerns run by the members of the family themselves. The ledger page of Bakhshi Ghulam Mohammad in Fair Deal Motors shows that he had to his credit a sum of Rs. 6,811/-, made up to two deposits of Rs. 111/- and Rs. 6,700/-, made in 1961. Mst. Hajra Begum had been taken as a partner in Fair Deal Motors, Srinagar which had the sole agency for T.M.B. vehicles in the Kashmir Province of the State. In the books of the Fair Deal Motors (ledger No. 1 for the year 1963) Mst. Hajra Begum is credited with a sum of Rs. 1,00,000/- as her capital contribution. Bakhshi Bashir Ahmed who put his share in the concern at 25% is similarly credited in the capital account page with a sum of Rs. 2,00,000/-. Another business was run by Bakhshi Bashir Ahmed under the name of New Bharat Transporters, Srinagar. This was started on 29th April, 1963. Though Bakhshi Bashir Ahmed has claimed that there were other partners, I hold that they are his nominees. It obtained a contract for transporting oil and oil products of the Indian Oil Co., from Pathankote to Srinagar and other places. The New Bharat Transporters had a number of vehicles—Oil Tankers—registered in its name and the total value of these vehicles after allowing for depreciation comes to about Rs. 1,90,000/-. I have verified the list of these vehicles together with the

dates of their purchases which were in 1963, and I consider that the depreciation allowed for ascertaining their cost in October, 1963 is, if anything, on the high side and the value is finally determined very reasonable. The purchase price of these vehicles was Rs. 2,26,532/-. The New Bharat Transporters had, besides, to their credit with the United Commercial Bank on the 10th of October, 1963 Rs. 75,069-88 NP and with the same Bank at its Jammu office a sum of Rs. 80,682/-, making a total of Rs. 1,55,752/- though by December, 1963 over Rs. 1,00,000/- of this had been withdrawn.

B-26. Besides the New Bharat Transporters, there was another business run by Bakhshi Bashir Ahmed in the name of New Bharat Transporters, Srinagar. Bakhshi Bashir Ahmed contended that he had nothing to do with this Firm while the case of the Government was that this Firm was started in 1960 as if it was an independent concern for entering into a contract with Telcos for drive away of their T.M.B. vehicles from Jamshedpur to Srinagar. The correctness of the respective cases of the Government and Bakhshi Bashir Ahmed have been considered by me when dealing with Allegation 25 (vide page.. infra) and I have found in an analysis of the evidence that the business really belonged to Bakhshi Bashir Ahmed. I am, therefore, taking into account the balance standing to the credit of Nav Bharat Transporters with the Central Bank Ltd., Srinagar as an asset belonging to Bakhshi Bashir Ahmed. The amount to the credit of this firm in October, 1963 was Rs. 32,243/-.

B-27. Bakhshi Bashir Ahmed's sister Shamah Mir who had shown as a partner in the Fair Deal Motors, Residency Road, Srinagar with a 25% share has been credited in the capital account of Fair Deal Motors with a sum of Rs. 2,00,000/-.

B-28. Lastly Mst. Yasmin Bakhshi was partner in Nedous Hotel, Srinagar and Gulmarg, had in her Bank account of the Kashmir Hotels in the United Commercial Bank, Srinagar a sum of Rs. 3,30,000/- the entire sum being moneys transferred to her by her husband Bakhshi Bashir Ahmed (see discussion in Allegation 20 page infra).

B-29. The total of these sums of these investments in business of the family headed by Bakhshi Ghulam Mohammad comes to Rs. 12,15,138/-.

B-30. (5) *Moveable Property, Including Vehicles, Furniture, Fixtures and Jewellery* :—This group has besides movable property in the shape of motor cars, furniture, fixtures and jewellery.

B-31. First as to the vehicles owned by the several members, Bakhshi Ghulam Mohammad was the owner of a Mercedes Cara 1955 Model purchased from the State Motor Garages for Rs. 11,500/- though the market value of this imported car at the relevant period was much higher, I am taking only the price paid by him. His wife Mst. Hajra Begum owned a Land Rover Jeep bearing registration No. J&K A 3030. This was purchased by Government for Rs. 17,609/- and has never since the date of its purchase been away from him (see discussion regarding this in Allegation 34 page 1 infra). I am taking the value of this

vehicle at Rs. 17,609/-. Bakhshi Bashir Ahmed was the owner of a Mercedes Benz Car of 1957 Model (Registration No. J K A 1215). This vehicle was insured with the Oriental Fire and General Insurance Co., Srinagar and in the policy has been valued at Rs. 40,000/- which I do not consider is an over-value having regard to the market price of these cars (vide Insurance Policy No. 202/P.C/19/64).

B-32. Mst. Shamah Mir, the respondent's daughter is stated to possess jewellery and gold of the value of Rs. 40,000/-. This statement and this value is to be found in the declaration made by her husband Mr. Nassarullah in the property statement which he filed for the period ending December, 1963 with the Government as required by the Service Rules. The jewellery etc. is there stated to have been presented to his wife as dowry on her marriage. The total of these items of vehicles, jewellery etc. is Rs. 1,09,109/-.

B-33. (6) *Cash and Bank Balances etc* :—The next head of assets consists of cash, Bank balances, deposits, securities, shares etc. Taking first Bakhshi Ghulam Mohammad, the balance at credit with the J&K Bank, Srinagar in his current account No. 417 of 1963 is Rs. 28,039-4 NP. This, however, represents what according to the respondent is the amount to the credit of the fund which he collected for "the welfare of Jawans" and he disclaims any ownership of these moneys though they stand in his name. The Government in their statement have included this item as one to be taken into account as part of the respondent's personal assets. In view of, however, my finding in Allegation 36 (vide page .. infra) I am omitting this item from account.

B-34. We next have Bakhshi Bashir Ahmed's account with the United Commercial Bank, Srinagar as per copy of the statement of the Bank account which has been filed. The amount standing to his credit on 10th October, 1963 was Rs. 21,121-15 NP. It was Rs. 38,355 odd at the end of December, 1963 but I am taking only the figures as they stood on the date the respondent relinquished his office. Bakhshi Bashir Ahmed had also a cash deposit with M/s Dharam Singh Babak Singh private Bankers of Delhi for Rs. 50,000/-. This is vouched by a statement of account filed by the Firm supported by an affidavit. It shows that the sum was deposited on 27th April, 1963. Then we have a set of three Life Insurance Policies, each securing Rs. 50,000/- on his life with the Life Insurance Corporation of India. These policies bear numbers 6506792, 6508365 and 6538100. The premium paid up to 31st October, 1963 as per the affidavit of Mr. Koul, Manager of the Life Insurance Corporation, Srinagar on the three policies is Rs. 10,734/-, Rs. 8,484/-, and Rs. 7,180/- respectively, making a total of Rs. 26,398/-.

B-35. Mst. Shamah Mir also had a cash deposit with Dharam Singh Babak Singh of Delhi of Rs. 50,000/- which was deposited with them on 27th April, 1963.

B-36. Mst. Yasmin Bakhshi had a sum of Rs. 9,770-34 NP to her credit in Fair Deal Motors, Srinagar (vide ledger of 1963, page 120). She had also with the United Commercial Bank, Srinagar in a home savings account a sum of Rs. 12,545-11 NP (vide copy of the Bank statement of

account). Miss Lorita, daughter of Bashir Ahmed had Rs. 28,975/- to her credit with the Fair Deal Motors, Srinagar (vide ledger of 1963, page 22). The other daughter of his, Miss Sozi had to her credit in Fair Deal Motors, Srinagar Rs. 32,400/- (vide ledger page 22) and also a cash deposit with Dharam Singh Babak Singh Delhi of Rs. 25,000/-. Miss Anjum Ara daughter of Mst. Shamah Mir had to her credit with Fair Deal Motors, Srinagar Rs. 28,476/- (vide ledger page 21). This amount is said to have been gifted by Bakhshi Bashir Ahmed to his niece as per the property statement of Mir Nassarullah. This girl had like others a cash deposit with Dharam Singh Babak Singh of Delhi of Rs. 25,000/-. Similar was the case with Miss Roshan Ara the second daughter of Mst. Shamah Mir. This also was a gift in her favour by Bakhshi Bashir Ahmed which by October, 1963 amounted to Rs. 28,476/- (vide property statement of Mir Nassarullah and ledger page 21 of Fair Deal Motors). She had besides a cash deposit with Dharam Singh Babak Singh of Delhi of Rs. 25,000/-, the amount having been deposited on 27th April, 1963. Identical amounts of Rs. 28,476/- and Rs. 25,000/- are found to the credit of Miss Ifat Ara another daughter of Shamah Mir respectively in Fair Deal Motors and with Dharam Singh Babak Singh of Delhi as in the case of others. The total of these deposits and credits comes to Rs. 4,16,638/-.

B-37. To sum up under the several headings we have the following assets :—

(1) Residential buildings	..	Rs.	7,06,669/-
(2) Commercial buildings	..	Rs.	7,55,000/-
(3) Vacant plots of land	..	Rs.	1,98,691/-
(4) Investments in businesses	..	Rs.	12,15,138/-
(5) Vehicles and Jewellery	..	Rs.	1,09,109/-
(6) Cash, Bank balances and deposits with Financial concerns	—	Rs.	4,16,638/-
		Rs.	<u>34,01,245/-</u>

BAKHSHI GHULAM NABI AND HIS FAMILY

BRANCH II

B. 38. I shall next take up the value of the assets held by Bakhshi Ghulam Nabi and his family. The family consisted of the members who are described in items 12 to 18 of Part A. They comprise, Ghulam Nabi and his five sons—Mohammad Yusuf, Ghulam Hassan, Nazir Ahmed, Abdul Qayum and his daughter-in law, Mst. Mahmooda Begum, wife of his eldest son—Mohammad Yusuf. In the case of this group I shall follow the same method of classifying their assets.

B. 39. (1) *Residential Buildings.*—First as to the residential building of this group, Bakhshi Ghulam Nabi is the owner of 3 items of residential property. The first is a house constructed or later reconstructed on property purchased from Shama Rani Mukerjee of Calcutta

in February, 1955 in the name of Bakhshi Ghulam Nabi (Document 103 in Allegation 1). I have already in dealing with Bakhshi Bashir Ahmed referred to the purchase of this item of property and that it was acquired for a consideration of Rs. 20,000/-. As stated earlier, several constructions were put up on the plot by the different members of the family and thereafter the buildings and their site were partitioned in May, 1961 under a registered document (vide Document 31 in Allegation No. 8). Under this partition an extent of 11 kanals 6 marlas and 125 square feet of the site fell to the share of Bakhshi Ghulam Nabi together with the construction on the site. The proportionate share of the value of the land acquired by Bakhshi Ghulam Nabi based on the value of the entire site being Rs. 20,000/- only would come to above Rs. 5,500/-, though their market value in October, 1963 would have been not less than Rs. 30,000/-. The value of the buildings constructed on the site belonging to Ghulam Nabi as seen from the fire policies taken out by Bakhshi Ghulam Nabi in 1963 from the Ruby General Insurance Co., Srinagar is Rs. 2,20,000/- (vide Document 25 in Allegation No. 1). The insurance policy besides covers furniture and fixtures in the building which have been valued separately by the assured at Rs. 80,000/-, (vide Fire Policy No. 214203/1963) making a total for the land, buildings, furnitures etc. of Rs. 3,05,500/-.

B. 40. The 2nd item is a property in Jammu. Bakhshi Ghulam Nabi was allotted two plots of land measuring 75' x 120' each in February, 1961 (vide Allegation 12 page infra). The market value of this property on the date of allotment has been stated to be Rs. 24,000/- and for the reasons that I have adduced in estimating the value of similar plots allotted to Bakhshi Bashir Ahmed I accept this valuation which is based upon the average of the figures obtained at the auction held in May, 1961 as correct. On this plot, Bakhshi Ghulam Nabi has constructed a house which has been estimated by the Assistant Engineer P.W. Department valuing it at P.W.D. rates at Rs. 1,02,487/-. I would value the land and the site together at Rs. 1,20,000/-. I would add that I have seen this house also though from outside.

B. 41. Lastly Bakhshi Ghulam Nabi purchased on 21st April, 1953 by a registered sale deed a house and land at Baramulla for Rs. 1,537/- (Document 107 in Allegation 1). The total of these three items of residential buildings with their sites comes to Rs. 4,27,037/-.

B. 42. (2) Commercial Buildings.—The next head of assets is that relating to commercial buildings. They consist of three items which are held in the joint names of Bakhshi Ghulam Nabi and his five sons. The first is the building on the Residency Road, Srinagar. The land on which these constructions have been erected was acquired on partition with Bakhshi Abdul Majid in 1960 (vide Document 62 in Allegation 1) when the several common businesses of the family were dissolved and were allotted to the different partners under an arrangement between the parties which was given legal effect by the award of an arbitrator. Without taking into account the value of the land which in this locality must be very substantial the building has been estimated at Rs. 1,50,000/-, being the figure at which it has been valued in fire

policy taken out by the owners from the Oriental Fire and General Assurance Co., Srinagar (vide Policy No. 202/F/1089 of 1964.)

B. 43. The second item of property consists of a Cinema with its furniture, fixture and fittings known by the name of Shiraz. The land was acquired by purchase (Document 50 in Allegation 1) and a Cinema was constructed thereon at a cost of Rs. 9,25,000/-. This property is held by Bakhshi Ghulam Nabi in partnership with one Kishen Gopal, he having a 75% share. The total amount which according to the books of this partnership (vide the affidavit of Kishen Gopal) has been invested by Bakhshi Ghulam Nabi and his sons in this concern for these constructions and their fittings etc. is Rs. 7,20,000/-.

B. 44. The 3rd item consists of a Motor Workshop with show Room, Office and residency at Manorama Ganj at Indore. The date on which the site was purchased is not ascertainable, hence the value of the site has been ignored. The Fair Deal Motors, Indore, the automobile business carried on by Bakhshi Ghulam Nabi & the members of his family in partnership with Mr. and Mrs. B. K. Bedi, these latter having an 1/4th share is carried on in these premises. The value of the building has been assessed by the Shastri Engineering Service at Indore, based upon the actual market rates prevailing in 1963. I might add that this valuation was not made for the purpose of this inquiry, only the figures have been taken for that report. The 75% share of the Nabi family in this investment comes to Rs. 3,83,143/-. The total value of these three items of commercial buildings is Rs. 12,53,143/-.

B. 45. (3) *Plots of Vacant Land Fit for Building purposes.*—The next head of assets consists of plots of vacant land owned by Bakhshi Ghulam Nabi and his branch and comprise 13 items. Of these, 8 stand in the name of Bakhshi Ghulam Nabi. These 8 are :—

- (1) A plot of land measuring 10 kanals and 16 marlas at Kursupathshahi Bagh, Srinagar purchased under a deed (Document 110 in Allegation 1) dated 24th March, 1962 for Rs. 1,537/- (inclusive of stamp and registration charges as already stated).
- (2) A plot of land of an extent of 77 kanals at Zonimar, Srinagar under a deed (sale deed Document 111 in Allegation 1) dated 22nd June, 1961 for Rs. 24,629.16 N.P.
- (3) A plot of land 2 kanals in extent in Barwala Tehsil, Ganderbal purchased under a deed (sale deed Document 112 in Allegation 1) dated 18th August, 1958 for Rs. 208. I am not taking into account the increase in market value in October, 1963.
- (4) A plot of land measuring 46,361 sq. ft. at Khanyar, Srinagar under a deed (sale deed Document 113 in Allegation 1) dated 2nd December, 1962 for Rs. 20,224.
- (5) A plot of land of the extent of 2 marlas in Shivpura, Srinagar under a deed dated 29th September, 1963 for Rs. 400. (vide sale deed Document 114 in Allegation 1)

- (6) A plot of land of an extent of 2 kanals and 4 marlas under 5 deeds of sale in September, 1963 for a total sum of Rs. 6,921 (vide sale deeds Documents 115 to 119 in Allegation 1).
- (7) A plot of land of an extent of 3 kanals and 8 marlas at Brein, Srinagar under 4 deeds in 1962-63 for a total price of Rs. 15,206 (vide Registered sale deeds Documents 120 to 123 in Allegation 1).
- (8) The last item being a plot of land at Mangli, Kathua of an extent of 18 kanals for Rs. 3,658 as per registered deed dated 29th April 1963 (vide Document 124 in Allegation 1).

B. 46. Bakhshi Mohammad Yusuf son of Bakhshi Ghulam Nabi purchased a plot of land at Brein, Srinagar of an extent of 3 kanals and 16 marlas for Rs. 13,679 under two deeds in 1962 (vide copies of the sale deeds, (Documents 125 and 126 in Allegation 1). Bakhshi Mohammad Yusuf and his younger brother Abdul Kayoom jointly purchased on 26th July, 1962 an extent of 56 kanals and 8 marlas of land at Bhagatshora, Srinagar for Rs. 30,322/- (vide Document 127 in Allegation 1). Abdul Kayoom purchased in his own name on 5th November, 1962 an extent of 2 kanals and 17 marlas of land at Krishbal, Srinagar for Rs. 3,052 (vide Document 128 in Allegation 1). The second son of Bakhshi Ghulam Nabi, Ghulam Hussain purchased on 18th May, 1963, 12 kanals and 1 marla of land also at Krishbal, Srinagar for Rs. 4,084/- under two deeds of sale dated 18th May, 1963 and 10th June, 1963 (vide Documents 129 and 130 in Allegation 1). Ghulam Hussain also obtained by purchase 66 kanals and 5 marlas of land at Gangabal in Jammu under a registered deed of sale dated 13th September, 1960 for Rs. 8,102/- (vide Document 131 in Allegation 1). The total value of all these purchases of plots by Bakhshi Ghulam Nabi and his sons comes to Rs. 1,32,022/-.

B. 47. (4) Investments in Business.—The next head of assets held by this group consists of investments in business. The family through its head Bakhshi Ghulam Nabi was a partner in the Firm of M/s Haji Ghulam Nabi Noor-ud-Din and Co., doing forest contract business. In this partnership the share of Ghulam Nabi was 50%, the other 50% being held by a stranger. The partnership owned at Dhangu Road, Pathankote for the purpose of its timber business, a building which was used both for the residence of the partners as well as for the office of the Firm. The land on which the building stood was purchased under two deeds dated 1st March, 1960 for Rs. 18,050/- (Documents 132 and 133 in Allegation 1). The buildings constructed on it have been valued by the Municipal over-seer Pathankote who has filed an affidavit in this connection, at Rs. 49,250/-. He has valued the built area at Rs. 15 per Sq. Ft. which I consider reasonable. As Bakhshi Ghulam Nabi was entitled only to a half share in this property, the value of his half share would come to—for the land and the buildings—Rs. 33,630/-.

B. 48. This Firm had besides in October, 1963, 4 vehicles—
: a Willys Wagon of 1960 model (J & K 8770), two Studebaker trucks

(bearing Registration Nos. J & K 5962 and 5963) of 1960 model and a T.M.B. truck (JK-A 479). The original cost of these vehicles comes over to Rs. 80,000. After allowing for depreciation at 10% P.A. on the straight line method suggested by me, the total value of these 4 trucks has been estimated at Rs. 39,600/- and the half share belonging to Bakhshi Ghulam Nabi at Rs. 19,800/-.

B. 49. The Firm has besides furnished for its contracts with the Forest Department of the State several sums as security. The amounts had been deposited with the Jammu and Kashmir Bank Ltd., and with the National Grindlay's Bank Ltd., the deposit receipts being lodged with the Forest Department as earnest money in respect of several forest leases taken by the Firm. The details of these deposits have been set out in an affidavit of Shri P.N. Koul, a stenographer in the office of the Chief Conservator of Forests, who has specified the receipt numbers of the several deposits and the identity of the Banks in which the deposits have been made and I accept the statement as correct. The half share of Bakhshi Ghulam Nabi in these security deposits comes to Rs. 57,689-28 NP.

B. 50. Besides Bakhshi Ghulam Nabi and his sons carried on as sole proprietors 4 other business concerns dealing in forestry and timber. First we have Tasneem and Co., which owned two vehicles, one Ambassador of 1962 model (J&K 1271) and the other a Studebaker Truck of 1956 model (J & K 5458). The Ambassador car has been valued by the Government at Rs. 12,000 and the truck at Rs. 4,800/after making allowance for depreciation on the lines suggested by me and I consider the value as correct. Besides Tasneem and Co., had a security deposit in the Forest Department, the amount having been deposited with the National Grindlay Bank Ltd., under FDR No. 004972 for Rs. 12,800 and CDRs for Rs. 2,240/-, making a total of Rs. 15,040/- Another business which Bakhshi Ghulam Nabi carried as sole proprietor was the Fair Deal Forest Company. This business had deposited with the J&K Bank sums totalling Rs. 33, 726 - 53 N P and lodged the receipts with the Forest Department as earnest money. (FDR No. 5847/23/1/63) for Rs. 13,222-50 NP, FDR 5848/23/1/62 for Rs. 10,697-93 NP and FDR 5850/23/1/1963 for Rs. 9,806-10 NP vide affidavit of Shri P.N. Koul already referred to). Yet another name in which Bakhshi Ghulam Nabi did his timber business was M/s JK Timber Traders. The balance sheet of JK Timber Traders as it stood on 31st March, 1964 has been filed with the Income Tax Department and has been made available as Document 136 in Allegation 1. This shows that on that date the investment of Bakhshi Ghulam Nabi's family and the reserves of the Firm totalled Rs. 2,49,476/-. This amount was represented by their investments in the forestry business, the value of 3 trucks, a building under construction, timber stock and Rs. 1,00,000/- with Haji Ghulam Nabi besides cash in hand and in the Banks. In view of my taking the sum disclosed by this balance sheet into account, I am omitting a fixed deposit of Rs. 58,071-17 NP which the Firm had with the J & K Bank under FDR 6710/87/6/1963 on the footing that this might have been taken into account in the balance sheet, though not specifically referred to.

B. 51. The last sole proprietary concern of this group was a Firm called Timber Traders and the amount of security deposited by

the concern which took a lease of Compartment of 29 Rajwar in 1963 was Rs. 23,477-94 NP. The amount was deposited with the Punjab National Bank Ltd., under FDR 54/63 dated 19th January, 1963.

B. 52. There was still one more concern in which this group was a partner, having a half share. This was the Firm run under the name Haji Ghulam Nabi Ghulam Rasool. This Firm had 4 trucks registered in its name, 3 Chevrolet Trucks of 1947 model (J & K 4632, 4723 and 4724) and one Studebaker Truck (J & K 6288) of 1956 model purchased by the Firm in 1957. Having regard to the age of Chevrolet Trucks which were purchased for Rs. 14,100/- from the Jammu and Kashmir Transport Department in 1957 I am putting no value of these trucks though they are being used. The Studebaker Truck, however, I consider, has some market value which I estimate at Rs. 4,800/- and the half share of the family in this asset would be Rs. 2,400. The total of these investments in business of Bakhshi Ghulam Nabi and his sons comes to Rs. 4,52,040/-.

B. 53. (5) Movable property — Vehicles etc.—Besides the above head of the assets, two of the sons of Bakhshi Ghulam Nabi—Mohammad Yusuf and Abdul Kayoom had obtained by purchase two vehicles, the first a Land Master of model 1957 (J & K 6013) and the other a Fiat car of 1963 model (JK-A 3838). The Land Master has been valued by the Government at Rs. 4,000 and this is supported by the affidavit of Deputy Traffic Controller of Operations and I consider this a reasonable estimate. The other car a new Fiat has been valued by the Government at Rs. 13,360/- which was the controlled price that was paid. The total of these two items is Rs. 17,360/-.

B. 54. (6) Movable Property—Cash Bank Balances, Deposits and Securities etc.—The next head of assets consists of cash, Bank balances, deposits and shares. In 1959 Bakhshi Mohammad Yusuf the eldest son of Bakhshi Ghulam Nabi applied for and obtained an allotment of Rs. 1,000/- equity shares of the Free Wheels India, Ltd., Delhi. The paid up value of each share which is its face value is Rs. 100/-. The total amount thus invested in these shares is Rs. 1,00,000/-. Mohammad Yusuf had besides taken out 3 policies insuring his own life with the Life Insurance Corporation of India (Srinagar) for Rupees 20,000/-, Rs. 15,000/- and Rs. 25,000/- respectively. The total premia paid upto October, 1963 in respect of these 8 policies was Rs. 327-63 NP (vide affidavit of the Manager of the Life Insurance Corporation, Srinagar). The next son Ghulam Hussain also held three policies on his own life with the Life Insurance Corporation, Srinagar for Rs. 10,000/-, Rs. 20,000/- and Rs. 20,000/- respectively and the total premia paid upto October, 1963 on these three policies is Rs. 3,009-75 NP (vide *Ibid*). The next son Nazeer Ahmed insured his life under two policies for securing Rs. 2,000/- and Rs. 10,000/- and the total premia paid on these two policies upto October, 1963 was Rs. 2,716-95 NP. The next son Abdul Kayoom had three policies, two for Rs. 10,000/- and one for Rs. 20,000/- and the total premia paid up to October, 1963 was Rs. 3,915-58 NP. The last son Mohammad Shafi held a single policy for Rs. 20,000/- on his life and the premium paid on this policy upto October, 1963 was Rs. 287-20 NP. The total value of the shares and the premia paid on the several policies comes to Rs. 1,10,257-11 NP.

B. 55. The six heads of assets of Bakhshi Ghulam Nabi and his sons total Rs. 23,91,859/-.

BAKHSI ALI MOHAMMAD

BRANCH III

B. 56. I shall next take up Bakhshi Ali Mohammad another brother of Bakhshi Ghulam Mohammad. He appears to have been the least affluent among the brothers. His assets consisted so far as known of only of a residential house and some motor vehicles. The first a residential house owned by him at Zaldagar, Srinagar and the other the furniture and fittings attached to this house. The land on which the house was constructed of an extent of about 4,000 Sq. Ft. was purchased by him in 1950 under a registered deed dated 23-2-2007 for Rs. 500/- (vide Document 139 in Allegation 1). Ali Mohammad constructed a building on the site for his residence and according to the declaration as regards the value of this house made by him for the purpose of an Insurance Policy that he took against fire from the Ruby General Insurance Co., Srinagar was Rs. 50,000/- bringing total of the land and buildings to Rs. 50,500/-. Bakhshi Ali Mohammad has put into this building certain fittings and furniture which according to the value declared by him for the fire policy which he took out was Rs. 5,000/- (Policy No. 256132)

B. 57. Ali Mohammad had registered in his name four vehicles, a Chevrolet Truck of model 1948 (J & K 3508), a Chevrolet Car model 1938 (J & K 116) and an Austin Car (J & K 2673) which also was admittedly very old and the Government had valued these three items at about Rs. 18,000/-. On my suggestion, however, this valuation was dropped and these three vehicles were treated as having no value. Besides Bakhshi Ali Mohammad owned a Land Master 1957 model (J & K 6670) which after allowing for depreciation at the rate suggested by me has been valued at Rs. 4,000/-. I consider this valuation near if not below the market price.

B. 58. The total value of all these items comes to Rs. 59,500/-.

BAKHSI WALI MOHAMMAD AND HIS FAMILY

BRANCH IV

B. 59. Bakhshi Wali Mohammad was the brother of the respondent next younger to Bakhshi Ali Mohammad who is now dead. His assets fall under 4 heads :—

- (1) residential buildings
- (2) commercial buildings
- (3) residential and commercial plots, and
- (4) investments in his business.

I shall take these in that order

B. 60 (1) *Residential Buildings.*—Bakhshi Zamir Ahmed son of Bakhshi Wali Mohammad purchased at an early date (sale deed not

available) a land with some constructions on it at Seria Safa Kadal, Srinagar. As the price for which the land was bought is not known, I am omitting it out of consideration. On the land a building was constructed and it had in its fittings and furniture. The building as well as the furniture were insured against fire with the Ruby General Insurance Co., (Policy No. 225176) and in the declaration accompanying the proposal, the building was valued at Rs. 70,000/- and the furniture and fittings at Rs. 10,000/- and this is the value which has been covered by the insurance. Mst. Fatimah Banoo wife of Bakhshi Wali Mohammad purchased a plot of land at Wattal Kadal, Srinagar in 1950 for Rs. 105/- (vide sale deeds Documents 158 and 159 in Allegation 1). A building was constructed on this plot which was a little over 5,000 Sq. Ft. and this building was insured against fire with the Ruby General Insurance Co., (Policy No. 241337) for Rs. 45,000/-. I, therefore, accept the value of the land and the buildings at Rs. 45,105/-. These two exhaust the residential properties of this family and they total Rs. 1,25,105.

B. 61. (2) Commercial Buildings.—The Commercial buildings of this branch consist of a building housing a Saw Mill and Machinery at Safa Kadal, Srinagar. The land was purchased under 3 documents (Documents 160 to 162 in Allegation 1) on 22nd June, 1956 for Rs. 15,216. The buildings together with the machinery installed therein have been valued by Zamir Ahmed, in whose name the land was purchased and the building constructed at Rs. 1,00,000/- while making declaration for effecting a fire policy with Ruby General Insurance Co., Srinagar (vide Policy No. 225175). The total value of the land and the commercial buildings which has been put on it has been estimated by the Government at Rs. 1,15,216/- which I accept.

B. 62. (3) Vacant Plots of Land fit for Building.—I next proceed to consider the plots of vacant land held by this branch. They consist of 3 items, one standing in the name of Zamir Ahmed and the other two in the joint names of Zamir Ahmed and his younger brother Nazir Ahmed. The first item of property which stands in the name of Zamir Ahmed is a plot of 1 kanal and 19 marlas at Chandora, Baramulla. The registered deed of sale (Document 163 in Allegation 1) bears date 27th November, 1963—a date beyond October, 1963—which is the date fixed for the ascertainment of the value of these assets. However, it is found on a reference to the recitals in the deed that the consideration was paid in September, 1963 when the document was also executed, though it was presented for registration sometime later. I am, therefore, taking the value of this land into account in estimating the total value of the properties of the branch in October, 1963. The consideration paid for the sale was Rs. 400/-.

B. 63. The other 2 items are land at Ferozpora, Baramulla of an extent of 8 kanals and 19 marlas for Rs. 2,042/- (vide Document 164 in Allegation 1) and the other a piece of land at Chandora, Baramulla of an extent of 9 kanals and 1 marla purchased on 20th August, 1963 for Rs. 3,074. I find from the sale deed in respect of Ferozpora property that it was purchased on 27th November, 1963 and the document also shows that consideration was to be paid only at the date of execution which was November, 1963. In view of that date being later than

October, 1963 I am omitting this item from consideration. The total value of the 2 items of land held at Chandora comes to Rs. 3,474/-.

B. 64. (4) Investments in Business.—The business investments of this branch consists of a single item. It is the capital contributed to the Fair Deal Motors, Srinagar of which Fatima Banoo, the widow of Bakhshi Wali Mohammad was a partner with an 8% share. The capital contributed by the lady as seen from the ledger page No. 2 of the capital account of the Firm (vide Document 167 in Allegation 1) is Rs. 40,000/-.

B. 65. (5) Movable Properties—Vehicles etc.—Bakhshi Wali Mohammad had 2 vehicles registered in his name a 1950 model Willys Jeep Registered as J & K 5000 and a 1944 model Willys Jeep but as these were old vehicles, I have not taken any amount as their value but excluded them altogether from consideration.

B. 66. The total value of the buildings residential and the commercial, vacant plots of land and investments in business of Wali Mohammad's branch which have been set out earlier, total Rs. 2,83,795.

BAKHSI ABDUL MAJID AND HIS FAMILY

BRANCH V

B-67. Bakhshi Abdul Majid is the next brother whose assets have now to be computed. From the figures it would be seen that Bakhshi Abdul Majid and his family own and possess the largest wealth out of all these several branches. The total assets amounting to over Rupees 63 lakhs at the most conservative estimate, valuing the buildings and sites in crowded and fashionable business localities in Srinagar purchased by him in the early 50s at their purchase price. These fall into six heads :—

B-68. (1) Residential Buildings :—The first head are the residential buildings of the family. All the items of properties under this head stand in the name of Bakhshi Abdul Majid and they are 3 in number. The first is what is called Sharma Niwas at Sonawar, Srinagar. The land of an extent of 16 kanals and 14 marlas with some construction on it, was purchased under a registered deed dated 3rd June, 1960 (Document 169 in Allegation 1) for Rs. 20,000/-. The buildings on the site were remodelled and reconstructed and the value of the buildings as set out in the declaration in connection with a policy of insurance against fire taken out from the Union Cooperative Insurance Society, Delhi is Rs. 35,000/- (vide fire Policy No. 11516). Computing the value of the land alone under the deed of purchase at Rs. 10,000/- and of the building at Rs. 35,000/- as per the policy, the total value of the entire property comes to Rs. 45,000/-.

B-69. The second item of property is a house at Sonawar Bagh purchased from one Dr. Rameshwar Lal under a registered deed dated

25th September, 1959 for Rs. 2,547/- (vide Document 170 in Allegation 1). The last item is a land with some buildings on it at the Bund in Srinagar of an extent of 4 kanals and 8 marlas purchased for Rs. 51,532/-. The registered sale deed (Document 171 in Allegation 1) bears date 5th October, 1964. Though, however, the document was executed in October, 1964 and had, therefore, to be left out of account as being beyond October, 1963 I agree with the learned counsel for the Government that this is an item which has to be taken into account, because the recitals in the documents show that the consideration was paid by two cheques which were issued on 20th July, 1963 and 26th September, 1963 and thus the entire consideration was paid before October, 1963. The total of these 3 items of residential buildings comes to Rs. 99,079/-.

B-70. (2) Commercial Buildings :—The second head of the assets are commercial buildings. There are 7 items and every one stands in the name of Bakhshi Abdul Majid. The first item is Amresh Cinema on the Residency Road, Srinagar. The Amresh as well as the Regal Cinema which is the next item were purchased for Rs. 1,50,000/- under a registered deed dated 9-8-2007 (1950). The Amresh Cinema was reconstructed on this site. I estimate the value of the land—apart from the value of the buildings constructed in October, 1963 at Rs. 75,000/- which is very much less than the value of land in Srinagar as disclosed by the sale deeds filed in the several allegations. So far as the value of the buildings is concerned, there could not be much dispute about it because the value which has been put by the Government is based upon the value assigned to it by Bakhshi Abdul Majid himself when effecting an insurance against fire of the buildings together with the fixtures therein with the Union Cooperative Insurance Society, Delhi (Policy No. 11524). The building has been valued by Bakhshi Abdul Majid in his policy at Rs. 4,00,000/-, the electric fittings and machinery at Rs. 45,000/- and the furniture at Rs. 25,000/- and the sanitary fittings at Rs. 5,000/-, making in all a total of Rs. 4,75,000/-. This together with the value of the land which I have taken at Rs. 75,000/- would make the value of the entire property at Rs. 5,50,000/-.

B-71. The second item of property is the other Cinema “Regal” also on the Residency Road, Srinagar. It would be apparent from what has been stated earlier that this Cinema has been constructed on the land purchased under deed of sale (Document 172). As the value of the entire land has been taken into account in arriving at the value of the first item, I am ignoring it here. This building as well as the machinery, fittings and furniture in it have also been insured and as per what Bakhshi Abdul Majid has himself declared as their value when taking out policy No. 155861036 with the New India Assurance Co., Srinagar as follows :—

Buildings	.. Rs	1,75,000/-
Furniture	.. Rs.	30,000/-
Electric fittings	.. Rs.	65,000/-
making in all Rs. 2,70,000/- for this item.		

B-72. The 3rd item of property consists of buildings and garages again on Residency Road, Srinagar purchased on 17-4-2008(1951) under

a registered sale deed which has been filed as Document 174 in Allegation 1. The consideration recited in the deed is Rs. 50,000/- and this with the stamps and registration charges borne by the vendee comes to Rs. 51,571/-. Though the value of the property in Srinagar and in the Residency Road area particularly has increased by nearly ten times between 1950-51 and 1963, the Government in their statement have valued it at the price at which the land has been brought 12 years before and so I have not thought it necessary to modify the figure.

B-73. Similar is the case with a set of shops and flats constructed by Bakhshi Abdul Majid on property purchased under Document 174 at Lambert Lane by the side of the Residency Road. The value of the buildings constructed by him as per the value declared in the insurance policy taken out by him against fire with the Union Cooperative Insurance Society, Delhi (Policies 1525 and 11523) is Rs. 10,00,000/-. The sanitary fittings have separately been valued and insured with the same Society for Rs. 75,000/-, making a total in respect of this item of Rs. 10,75,000/-.

B-74. The next item was a show room building adjoining the Regal Cinema on the Residency Road built on property purchased under document 171. Leaving the land, the building has been valued by Bakhshi Abdul Majid at Rs. 1,00,000/- in a policy against fire which he took from the UCI Society Ltd., Delhi (vide Policy No. 3783).

B-75. Another set of buildings constructed by Bakhshi Abdul Majid on property purchased under Documents 171 and 174 consists of a Hotel called Hotel Pamposh. The value of the buildings as per fire policies taken out by Bakhshi Abdul Majid himself is Rs. 20,00,000/- and the sanitary fittings in the building have been separately insured for Rs. 4,75,000/- (vide policies Nos. 1529, 1519, 1122, 1524 and 1522 of the Union Cooperative Society, Delhi). On this property Hotel Pamposh, Bakhshi Abdul Majid has taken a loan by mortgaging it with the State Financial Corporation of Rs. 8,00,000/-. Besides there was also a hypothecation with J&K Bank under which on 10th October, 1963 Bakhshi Abdul Majid owed the Bank Rs. 6,12,345/-. Deducting the amount of this mortgage and charge the next value of this item comes to Rs. 10,62,655/-.

B-76. Besides Bakhshi Abdul Majid constructed a godown and certain garages near Amrish Cinema out of the land purchased under Document 174. The value of these buildings as per the insurance policy effected by Bakhshi Abdul Majid was Rs. 18,000/- (vide Policy No. 11510). The total value of all these 7 items comes to Rs. 31,27,226/-.

B-77. (3) *Vacant Plots of Land Fit for Building* :— The 3rd head of the assets are, as usual plots of vacant land held either for residential or commercial purposes. The first item among them are plots of land purchased in January, 1963 under 6 deeds of sale (Documents Nos. 179 to 184) in the village of Asthal near the Boulevard. Of these, the propriety of 4 sales is impugned in Allegation 2 while there is no challenge of that nature in regard to the other two. The total extent

of land covered by these sales is about 18 kanals and 10 marlas and the price paid for them according to the sale deeds, is about Rs. 62,000/- (including stamps and registration charges). Though the Government have valued this property at Rs. 92,500/- based upon the market value as disclosed by another sale in the vicinity, I have held in dealing with the charge in relation to four of these purchases in Allegation 2 that the sales had not been proved to be at an under-value. I am, therefore, valuing this item at Rs. 62,000/- only.

B-78. In addition Bakhshi Abdul Majid is admittedly in possession of an additional extent of 26 kanals and 8 marlas of land contiguous to that purchased in January, 1963 besides 4 kanals and 9 marlas of land which has been entered in the revenue records as grave-yard land.

B-79. The case of the Government is that Bakhshi Abdul Majid trespassed upon lands contiguous to and adjoining those which he purchased and brought them under his effective possession and enjoyment. The facts in relation to this are set out by me when discussing Allegation 3 which deals with the charge in relation to this encroachment. The precise point of time when the encroachment took place is not clear from the revenue records but we have the admission of Bakhshi Abdul Majid in his reply to Allegation 3 in which after denying that there were encroachments, he claims that they were lands whose possession was voluntarily handed-over to him by his vendors on the footing that these were included in their sales. On this basis he claims rightful ownership of these plots. I would, therefore, be justified in proceeding on the footing that he had reduced this extent of land into his possession before October, 1963. Valuing this land at Rs. 2,000/- per kanal—which is the average price yielded by his regular sales, the value of this 30 kanals 17 marlas of land would be Rs. 61,700/-.

B-80. I need only add that I have not taken into account the area covered by the water channels whose total comes to 34 kanals and 19 marlas which have admittedly been filled up by Bakhshi Abdul Majid on the evidence adduced by the Government, it was not clear that filling up was completed and the bed of the canals was sufficiently raised to become firm land by October, 1963.

B-81. Besides Abdul Majid purchased in the name of his wife Mst. Maqsooda Begum 85 kanals and 6 marlas of land in Asthal, contiguous to his own purchases. The total value of these lands as per their deeds (including stamp and registration charges) comes to about Rs. 1,35,000/-. I might add that these lands were acquired under 19 deeds of sale of which the propriety or legality of 17 are challenged in Allegation 2.

B-82. The next item in this group is a plot of land No. 27 in Block "C" in Gandhi Nagar which was allotted to him by the Government on 20th March, 1961. The plot is of an extent of one thousand Sqr. yards (75x120 Ft) and has been valued by the Government at Rs. 12,000/-, this being the average price fetched when similar plots in the

same locality were auctioned in June, 1961, though the price charged by Government (Document 185 in Allegation 1) was only Rs. 2,000/- but even this amount has not been paid (see Allegation 12). I am accepting the value of the plot at Rs. 12,000/- based on Document 24 in Allegation 12.

B-83. The next item is a plot at Delhi at Green Park purchased from the Urban Improvement Housing and Construction Coy., Ltd., by a registered deed of sale on 16th April, 1962 for Rs. 3,36,919-50 NP (vide copy of the deed Document 186 in Allegation 1). This plot has been purchased for the purpose of constructing a Cinema Theatre on it.

B-84. There was also a purchase made by Maqsooda Begum from the Yuvarani Sahiba of property in the same locality as that covered by her other purchases of 51 kanals and 9 marlas of land for Rs. 74,762/- (vide Document 207 in Allegation 1).

B-85. Bakhshi Abdul Majid and Bakhshi Bashir Ahmed jointly purchased under a registered deed dated 30th January, 1959 land at Mathura Road, New Delhi (vide Document 187 in Allegation 1) for Rs. 50,223/-. Though the value of property in Mathura Road has gone up considerably yet I am computing its value in 1963 on the basis of the price paid in 1959.

B-86. Aftab Anwar minor son of Bakhshi Abdul Majid was allotted land at Bonumsar, Srinagar of an extent of 2 kanals for locating a petrol pump. The premium charged for the land was Rs. 4,000/-, at Rs. 2,000/- per kanal and it is the case of the Government that the premium was fixed at too a low rate and that the market value of the site on the date of the allotment was Rs. 15,000/- per kanal. In support of their contention regarding the market value they cited an instance of a purchase of the contiguous land which was put to auction and was purchased by the highest bidder for that figure. This is the subject of Allegation 11 where I would be discussing the evidence in relation to the value also. I might state here that this value of Rs. 15,000 per kanal has been questioned on the ground that as the highest bidder at the auction owned property next to that which was put up for auction, the special value and advantages to the particular buyer might have led to the high price paid. This, however, cannot explain the next lower and other bids by others who did not own any contiguous property. In any event, I am satisfied that the price cannot be anything less than Rs. 5,000 per kanal.

B. 87. The market value of the property would, therefore, be taken at Rs. 10,000. The total value of these items would, therefore, come to Rs. 7,42,604.

B-88. (4) *Investments in Business* :- The 4th head of the assets consists of business investments. Bakhshi Abdul Majid was a partner in Kathua Motors, Jammu (vide Partnership deed- Document 232-b in Allegation 1). He was entitled to a 50 per cent share in that Firm and as seen from the affidavit of the Manager of that concern, his capital investment in it as on 30th September, 1963 was Rs. 50,000. This amount has been there from 1st of January, 1961 when under the award of

Mr. J. N. Bhat the interest of the family in Kathua Motors, Jammu was allotted to Bakhshi Abdul Majid.

B-89. J & K Automobile Ltd., Jammu is a private limited company converted from a proprietary concern. Bakhshi Abdul Majid was a share holder in this Company holding in his name 250 shares of Rs. 100/- each at the total value of Rs. 25,000 (vide true copies of share certificates, Document 129 in Allegation 1).

B-90. Feroze and Co., of which since 1st of January, 1961 Bakhshi Abdul Majid was the sole proprietor was the registered owner of 5 motor vehicles. Out of these I am omitting out of consideration 2 Chevrolet Trucks J & K 3928 and 1859 as not having any value owing their age but 3 other vehicles are worth at least Rs. 13,400, two being Studebaker Trucks (J & K 4167 and 4254) of 1955 model and the third a Willys Jeep of 1961 model. This value has been arrived at on my suggestion by allowing the necessary amounts of depreciation. Besides Feroze and Co., had a sum of Rs. 1,000 with the National Grindlay Bank Ltd., Srinagar and the deposit receipt (FDR No. 304 dated 6th August, 1954) has been lodged with the Forest Department of the Jammu and Kashmir State as security.

B-91. Bakhshi Abdul Majid was also a partner with a half share in Kashmir Motors. This Firm owned an Ambassador Car J & K-A 2324 purchased in 1962. The Government have valued Majid's half share at Rs. 6,000 allowing for depreciation and I consider the price suggested reasonable.

B-92. Mst. Maqsooda Begum was a Director besides being a share holder of J & K Automobile Ltd., Jammu already referred to. She was the registered holder of 750 shares of Rs. 100 each, of a total value of Rs. 75,000 as seen from the true copies of the share certificates (Document 209 in Allegation 1).

B-93. The total of this head "business investments" comes to Rs. 1,75,400.

B-94. (5) *Movable property-vehicles, Furniture etc.:-* The 5th head of assets consists of movable property vehicles, fixtures and furnitures. Bakhshi Abdul Majid resides at Miskeen Bagh which is an evacuee property under lease to him. The fixtures and house-hold goods at this residence have been valued by him at Rs. 2,00,000 as per his statement when taking out Policy No. 1530 in the Union Cooperative Insurance Society, New Delhi in which he has insured them against fire etc. (Vide Document 212 in Allegation 1).

B-95. Reference has already been made to the Pamposh Hotel. The furniture in it, the carpets, the telephone equipment and crockery have been insured by Abdul Majid with the Union Cooperative Insurance Society, New Delhi for Rs. 4,10,000 under 4 policies (Policy No. 3776

dated 31st December, 1963 is in respect of the carpets and its value is declared at Rs. 70,000. Imported laminated sheets and glassware were insured for Rs. 40,000 under policy No. 1534. Hotel equipment and utensils were insured for Rs. 2,50,000 on 28th March, 1963, while the telepohe equipment packed in 9 cases and kept in the premises were insured for Rs. 50,000 under Policy No. 1560). Bakhshi Abdul Majid had also a Chevrolet petrol tanker of 1954 model bearing No. J & K 3736. This vehicle was purchased from the Transport Department in 1962 for Rs. 7,000 and I accept the valuation of Rs. 6,000 which the Government have put on this item.

B-96. For his own use Bakhshi Abdul Majid had a Bentley Car (JK A 2) which has been valued by the Government at Rs. 13,000. I am accepting this value because though the Car is an old one, the same has been acquired in exchange from Harry Hedou for an Ambassador of 1961 model. Bakhshi Abdul Majid has besides a Chevrolet Truck of 1959 model. Its purchase price when new was Rs. 22 thousand odd. But having regard to its age, the Government have valued it Rs. 12,000 which I accept as resonable. He had also a Mercedes Benz Car of 1957 model bearing registration No. JKA 5132. On the basis of the value put on a Mercedes Car of this age by Bakhshi Bashir Ahmed who owns a similar vehicle the Government have estimated it at Rs. 40,000 and I accept it. He had also a Standard Car of 1962 model bearing Registration No. JKA 2478. After allowing for depreciation of Rs. 3,000 from its original purchase price, the Government have valued it at Rs. 10,000 in October, 1963 and I consider this estimate as fair. Besides these, Bakhshi Abdul Majid also owned a Pontiac Car of 1950 model bearing registration No. JKA 2605 which he purchased in 1962 and a Chevrolet Car 1952 model bearing JKA 3046. In view of their age, however, the Government at my suggestion have agreed not to put any value on these two vehicles though I consider that they are worth quite an amount in October, 1963.

B-97. Bakhshi Abdul Majid's wife Maqsooda Begum purchased an Ambassador Car 1961 model in 1962 (JK A 5149) The vehicle has been insured for comprehensive risk and the value at which the vehicle has been estimated by the assured is Rs. 12,000 which is the value put on it by the Government and as it is based on the Owner's own valuation, I accept it. The total of the assets under this 5th head comes to Rs. 7,03,000.

B-98. (6) *Cash deposits in Banks and Shares :-* The 6th head of assets relate to deposits in Banks and shares. With the United Commercial Bank, Srinagar in which Bakhshi Abdul Majid has an account the balance standing to his credit in October, 1963 was Rs. 11,120 (vide statement of account of the Bank, Document 217 in Allegation 1). In the same Bank he had also a fixed deposit in which according to the Bank statement of accounts (Document 224) the amount standing to his credit in October, 1963 was Rs. 1,81,682-87 N P. With the same Bank at its office in Bombay, Bakhshi Abdul Majid had in fixed deposit on 7th October, 1963 Rs. 70,000 (Document 232 A).

B-99. Next we come to the shares held by him. He had :—

(1) 600 shares of Rs. 10 each in the Imperial Tobacco Co., which he obtained on transfer from the R. Investment Co., Ltd., London for Rs. 6,300
(copy of transfer deed, Document 218).

(2) 100 equity shares (scrip No.s 1001 to 2000) of Rs. 100 each in Free Wheels (India) Ltd., New Delhi .. Rs. 1,00,000

(3) A further 100 equity shares of Rs. 100 each (scrip No.s 11603 to 11702) (In regard to both these see Document 219) .. Rs. 10,000

(4) 100 shares of Rs. 10 each (shares scrip No.s 30001 to 31000) in Forgings Private Ltd., Delhi (vide Document No. 221) Rs. 10,000

(5) 120 equity shares of Rs. 100 each on which Rs. 50 only has been paid, covered by two certificates 1453 and 1454 for 60 shares each in Globe Motors Ltd., New Delhi (vide Document 222) Rs. 6,000

(6) 100 equity shares of Rs. 100 each (share certificate Document 223) in the United India Periodical Ltd., Delhi Rs. 10,000

Total of the amount
invested in shares Rs. 1,42,300

B-100. Lastly a sum of Rs. 4,51,000 had been paid to him as an advance to the Pearl Mechanical Engineering and Foundry Works Ludhiana for enabling the purchase of 2400 spindless valued at over Rs. 15,00,000 (vide the affidavit of Jagdish Lal Dehal, Director of the Company). These exhaust the items standing in the name of Bakhshi Abdul Majid.

B-101. Coming to Mst. Maqsooda Begum she like Bakhshi Abdul Majid had a fixed deposit with the United Commercial Bank, Srinagar and the amount to her credit in October, 1963 was Rs. 1,01,878-60 NP. (vide Document 226 Bank's extract of the account). With the Central

Bank of India in which the lady had an account, the balance standing to her credit was Rs. 5723. With M/s Kellsons of Cannought Circus, New Delhi there was a sum of Rs. 51,197 due to her on a loan (vide their statement of account Document 227). She like her husband had 120 equity shares of the face value of Rs. 100 on which Rs. 50 was paid in Globe Motor Delhi--- Rs. 6,000 (vide share certificate, Document 226).

B-102. We next go to Bakhshi Anwar Aftab son of Bakhshi Abdul Majid. In fixed deposit with the United Commercial Bank, Srinagar he had, as per the statement of the account of the Bank (Document 230 in Allegation 1) the same amount as her mother namely Rs. Rs. 1,01,878-60 NP. Like his father he also held in his name 1000 shares of Rs. 10 each in Forgin Private Ltd., Delhi (share certificate copy Document 229) value Rs. 10,000.

B-103. Bakhshi Parwaiz Ahmed another son of Bakhshi Abdul Majid had an identical type of asset namely fixed deposit in U. Co., Bank Srinagar for Rs. 1,01,878-60 NP (Bank statement of account, Document 230) and 1000 shares of Rs. 10 each in Forgin Private Ltd., Delhi (copy share certificate, Document 231) Rs. 10,000.

B-104. The last son of Bakhshi Abdul Majid, Munir Ahmed had also the same amounts in the same shape namely a fixed deprecit in the U. Co., Bank for Rs. 1,01,878-60 NP and 1,000 shares of Forgins Private Ltd., Delhi for Rs. 10,000 (vide Documents 230 and 232).

B-105. Miss Amina daughter of Bakhshi Abdul Majid had the same items and the same amounts as her brothers-a fixed deposit for Rs. 1,01,878-60 NP in the United Commercial Bank and 1,000 shares in Forgins Private Ltd., Delhi for Rs. 10,000 (Documents *ibid*).

B-106. The last child of Bakhshi Abdul Majid Miss Hanna had also a fixed deposit with the United Commercial Bank for Rs. 1,01,878-60 NP. The Government have included this last item also as among the assets of Bakhshi Abdul Majid's family. They would normally be justified in doing so. What, however, I have to consider in terms of the Notification are "the assets of the individuals whose names have been set out in Part "A" of Schedule I. "The Family of Bakhshi Abdul Majid as set out in Part "A" takes in only of Bakhshi Abdul Majid and his wife, 3 sons and a daughter and does not include Miss Hanna, possibly by inadvertance. Whatever be the reason I am not entitled to take the assets of Miss Hanna into consideration and, therefore, I am omitting it from this computation.

B-107. The total of all these items, Bank balances and shares comes to Rs. 14,68,417.

B-108. The total value of the six heads of assets of the family of which Bakhshi Abdul Majid was the head comes to Rs. 63,15,716.

BAKHSHI ABDUL HAMID AND HIS FAMILY

BRANCH VI

B-109. Bakhshi Abdul Hamid is the next brother of Bakhshi Ghulam Mohammad, the value of whose assets has to be computed. These fall under 4 heads :—

- (1) Residential buildings
- (2) Vacant plots
- (3) Movable including vehicles, and
- (4) Cash, Bank balances, shares and deposit.

B-110. (1) *Residential Buildings* :—Under a deed of sale dated 22nd July, 1958 (Document 240 in allegation 1) Bakhshi Abdul Hamid purchased for Rs. 5,000 from one Dr. Soni a plot of land with a small building on it at Sonawar Bagh, Srinagar, the property being known as Shangrela. Subsequently other lands contiguous to it were purchased for Rs. 25,432 and then another also adjacent to it was purchased from Ghulam Hussain son of Subhan Bhat for Rs. 10,000. Structures were erected using the entire land and they were insured with the New India Assurance Co., Ltd., Srinagar under several policies.

(1) for Rs. 2,32,000 covering the building and the furniture etc. and another policy

(2) for Rs. 40,000/- on the building itself, making a total of Rs. 2,72,000/- as the insured value of the buildings. The total value of the land and buildings comes to Rs. 3,12,432, valuing the land in 1963 at its purchase price in 1958.

B-111. The second item of residential property belonging to this branch was a building in Safa Kadal Srinagar. This was constructed on a plot purchased as early as July, 1956 in the joint names of Bakhshi Abdul Hamid's wife Mst. Sitarah Begum and 3 of his sons, Faiz Ahmed, Zahoor Ahmed and Farooq Ahmed. The buildings and the furniture without taking into account the land on which the buildings stand, have been valued at Rs. 70,000 in the insurance policy taken out with New India Assurance Co., Ltd., Srinagar (Document 173 in Allegation 1). The total value of the Residential buildings with the furniture in them comes to Rs. 3,82,432.

B-112. (2) *Vacant plots of land fit for Building purposes* :—Concerning next to vacant plots of land owned by this branch, these consist of two items, one in the name of Bakhshi Abdul Hamid of 23 kanals and 17 marlas of land at Ferozpora, Tehsil Baramulla, purchased under a registered deed dated 20th June, 1963 (copy of deed, Document 242 in Allegation 1) for Rs. 15,804. The other consists of two purchases made in the name Mst. Sitarah Begum the wife of Bakhshi Abdul Hamid. Land at Barso Tehsil Pulwama was purchased from Mst. Mukhti on 24th April, 1963 (copy of deed Document 243 in Allegation 1) for Rs. 6,082 and another

of a 4 kanals in extent at Parimpura was purchased from two persons Lasi Mir and Qadir Mir under a deed dated 21st April, 1955 for Rs. 1,537. The total of these two items of vacant plots comes to Rs. 23,423.

B-113. (3) *Movable properties- Vehicles etc.*—Bakhshi Abdu lHamid owned a 1962 model Ambassador Car registered in his name purchased by him in 1962 for Rs. 13,500. This has been valued by Government at Rs. 12,000 in October, 1963, a figure which I consider reasonable.

B-114. (4) *Cash in Banks* :—As per the statement of account furnished by the J & K Bank Ltd., Srinagar, Bakhshi Abdul Hamid had to his credit in the Bank a sum of Rs. 24,130 on 9th October, 1963 (vide Document 246 in Allegation 1).

B-115. The total of the assets of this group of which Bakhshi Abdul Hamid was the head being the total of the 4 heads set out earlier comes to Rs. 4,41,985.

BAKHSI ABDUL RASHID AND HIS FAMILY

BRANCH VII

B. 116. We next come to the branch of Bakhshi Abdul Rashid, maternal cousin of Bakhshi Ghulam Mohammad. Here as in the branch of Bakhshi Abdul Hamid, the assets fall under 4 heads :—

- (1) Residential buildings with their furniture
- (2) Vacant building sites
- (3) Investments in business, and
- (4) Movables including vehicles

B. 117. (1) *Residential Buildings.*—The residential buildings owned by this branch consist of a single building, built on plots of land Nos. 42, 43, 44 and 28 allotted by the Government to his son Ghulam Jeelani and to himself and his daughter in the Jawahar Nagar Extension at Srinagar. The allotment was made in August, 1962 and a single building has been constructed on these contiguous plots (Besides this the daughter Mst. Zamrooda and her husband have been jointly allotted plot 4 ND Nazool Department in 1963—the plot being of an extent of 4 kanals. The extent of the plots and their value are given below)

B. 118. The building constructed on the 1st four plots has been insured against fire etc. with the Oriental Fire and General Insurance Co., Ltd., Srinagar under policy No. 202/F/619 (vide Document 250) for Rs. 4,00,000/-.

B. 119. On the basis of the average market price disclosed by actual sales of plots in the area at the date of the allotment, I find that the minimum price of building land is Re. 1/- per Sq. Ft. (vide the sales

listed in Document 29 in Allegation 12). On this basis the value of the land allotted to Bakhshi Abdul Rashid and his son and daughter would be:—

<i>No. of plot</i>	<i>Extent</i>	<i>Market price.</i>
No. 42 Jawahar Nagar	79 x 80 14220 Sq. Ft.	Rs. 14,220/-
No. 43 and 44 Jawahar Nagar.	80 x 180 28800 Sq. Ft.	Rs. 28,800/-
No. 28 Jawahar Nagar	80 x 120 9600 Sq. Ft.	Rs. 9,600/-
No. 4 N.D.	4 kanals 21600 Sq. Ft.	Rs. 21,600/-
Total		Rs. 74,220/-

B. 120. The land and the buildings I, therefore, estimate at Rs. 4,74,220/-.

B. 121. (2) *Vacant Plots.*—The members of this branch own residential and commercial plots acquired by them. Bakhshi Abdul Rashid was allotted plots Nos. 38 and 39 at Gandhi Nagar, Jammu on 24th November, 1961, each plot being of the size of 75' x 120'. The value of the plot as the average price at the auction as per document No. 24 already referred to in Allegation 12 would on the date of the allotment be Rs. 24,000/-.

B. 122. Besides Bakhshi Abdul Rashid also obtained by purchase a piece of land 2 kanals and 10 marlas in extent at Gupkar, Srinagar for Rs. 8,716-50 NP (vide sale deed Document 252).

B. 123. His son Ghulam Jeelani had obtained by allotment from Government Nazool land of an extent of 8 kanals and 5 marlas at B.C. Road, Jammu on 6th April, 1961 for commercial purposes namely for erecting a petrol pump. The premium charged for this land under the Government order of April, 1961 which granted the lease to him was Rs. 8,250/- at Rs. 1,000/- per kanal. It is the case of the Government that apart from the market value of the land the premium usually charged for land in this locality, which is specially suited for petrol pumps being on the highway between Jammu and Srinagar is Rs. 5,000/- per kanal and have cited the instance of one Sital Singh to whom another site was leased with the premium being fixed at this figure. It is no doubt true that the files do support the Government as regards the premium demanded from Sital Singh. I, however, find in the files, a note of the Deputy Commissioner, Jammu dated June, 1961 in which he states that the usual premium charged for petrol pumps in this area was Rs. 4,000/- per kanal. In the circumstances I consider that the site should be valued at Rs. 4,000/- per kanal—which would be fair though possibly it errs in favour of the respondent. The value of the site would be Rs. 33,000/- (vide Allegation 10).

B. 124. Ghulam Jeelani had also another petrol pump granted to him by the Government of an extent of 6 kanals and 8 marlas, the

plot being carved out of the land granted under lease to Nedous Hotel. The lease was granted without charging any premium. The Government have valued this property at Rs. 50,000/- based upon what another property fetched at an auction. I, however, consider that the sum of Rs. 5,000/- per kanal would be a fair estimate of the premium and that ought to have been charged for the site. Computing on this basis, I would estimate the 6 kanals and 8 marlas at Rs. 32,000/- only (vide Allegation 9). The total of these plots held by this group would come to Rs. 97,716/-.

B. 125. (3) *Investment in Business.*—Bakhshi Abdul Rashid was also shown as a partner in Fair Deal Motors, Srinagar with a 15% share. The capital ledger of the Firm (vide ledger No. 4 of 1963) shows that he had invested in the concern Rs. 1,00,000/-.

B. 126. (4) *Movables including Vehicles.*—In 1963 Ghulam Jeelani purchased a Fiat Car (JK A 3636) for Rs. 13,000/-.

B. 127. The total of the assets under these 4 heads comes to Rs. 6,84,936.

BAKHSHI GHULAM AHMED AND HIS FAMILY

BRANCH VIII

B. 128. The next branch to be considered is that of Ghulam Ahmed, cousin of the respondent and brother of Bakhshi Abdul Rashid. It consists of two members, himself and his wife. Ghulam Ahmed owned a house at Sonawar Bagh, Srinagar. The land was part of a property purchased from Mrs. Chatterjee in February, 1955 in the name of Ghulam Nabi for Rs. 20,000/- and thereafter the several branches of the family constructed separate residences for themselves on this land. When the family broke up at the end of 1960 a declaration was made and registered regarding the separate ownership of the land and the buildings erected by each branch (vide Document 56 in Allegation 1). This was later confirmed and a division by metes and bounds was effected by a registered deed executed in 1961 (vide Document 31 in Allegation 8). Under this partition Ghulam Ahmed obtained as his share 5 kanals 19 marlas and 62 Sq. Ft. of land with the house standing thereon.

B. 129. No doubt the Government have valued the land at Rs. 50,000/- even at the date of purchase, but for reasons which I have set out when dealing with Allegation 7, I have held that Rs. 20,000/- was not an unfair price. On the basis of this figure for the entire land, the value of the proportionate share allotted to Ghulam Ahmed would come to Rs. 2,750/-. The value of the building as per Bakhshi Ghulam Ahmed's own declaration (Document 258 in Allegation 1) when he made an application to ESSO for a dealership in their oil products was Rs. 80,000/-. The Government have relied on this in support of their estimate of the value of this property and I consider they are justified in

doing so. As, however, it is possible that in this valuation, Bakhshi Ghulam Hussain meant to include the value of the land, I am not adding it to the declared value.

B. 130. (2) Plots of Vacant Land Fit for Building purposes:— This branch also owned certain plots of vacant land. They consisted of 2 items which stood in the names of Ghulam Ahmed and his wife respectively. Ghulam Ahmed obtained by purchase an extent of 18 kanals and 11 marlas of land at Dhrangbal in Tehsil Pulwama under 3 registered deeds of sale, all dated 18th May, 1961 (Documents 261 to 263 in Allegation 1) for Rs. 12,388/-. The other item of property is a plot of land at Harwan in Tehsil Khas purchased under a deed of sale (Document 264 in Allegation 1) dated 14th February, 1962 for Rs. 5,077/-. The total purchase price of these two items comes to Rs. 17,465/-.

B. 131. (3) Movable Property—Vehicles etc.—Bakhshi Ghulam Ahmed had a Lambretta Scooter (JK A 2124) purchased new on 2nd August, 1962. After allowing for depreciation the Government have valued this item at Rs. 2,500 which I accept.

B. 132. (4) Investments in Business.—Bakhshi Ghulam Ahmed had lent moneys to Fair Deal Motors and as per the ledger of Fair Deal Motors (ledger page 115 vide Document 265 in Allegation 1) his credit balance in October, 1963 was Rs. 15,579/-. Besides he in his declaration which he made to ESSO in connection with his application for dealership stated that he had cash in hand in November, 1962 to the extent of Rs. 75,000/-. The Government are justified in taking this into account in computing the wealth of this branch.

B. 133. The total of these 4 items of this group comes to Rs. 1,90,544/-.

BAKHSHI GHULAM HUSSAIN AND HIS FAMILY

BRANCH IX

B. 134. The last branch in part "A" is that of Bakhshi Ghulam Hussain, cousin of the respondent and his family and the assets of this branch consist of properties under 5 heads :—

B. 135. (1) Residential Buildings:—Bakhshi Ghulam Hussain was the owner of 4 such buildings and they were (1) a house at Chandipora, Tehsil Baramulla. The value of the building constructed on it by Ghulam Hussain was as per the policy taken out with the New India Assurance Co., Srinagar against fire was Rs. 15,000 and the furniture therein was valued in the same policy at Rs. 4,000, making in all Rs. 19,000 (vide Policy No. 158590615). As the price for which the land had been purchased is not known, the sale deeds not being available the value of the land has been ignored.

B. 136. The second item is a house constructed on the land purchased under a deed dated 29th April, 1958 at Tengapora, Srinagar.

As the deed is not available no account has been taken of the value of the land. The construction erected on it has been valued at Rs. 75,000 as per the insurance policy taken out against fire on this building (Policy No. 158590712 of the New India Insurance Co., Srinagar.)

B. 137. The 3rd item is a land together with some buildings on it at Amira Kadal, Srinagar purchased in October, 1963 for Rs. 51,000 under a sale deed (Document 318 in Allegation 1). The Government have valued this property at Rs. 51,000 being the price paid for it as recited in the deed.

B. 138. The last item is a piece of land with a building thereon purchased at Gogjibagh, Srinagar from one M. Kartar Singh on the 14th of August, 1963 for Rs. 90,000/-. The house has been reconstructed and without taking into account the value of the land, the Government have estimated the value of the property at Rs. 1,65,000. This being the amount for which the building has been insured against fire with the New India Assurance Co., Srinagar (vide Fire Policy No. 158590652). The same policy also covers against fire the furniture in the building which has been separately valued for Rs. 50,000, giving in all a total value of Rs. 2,15,000. The insurance policy covering these 4 items of properties are to be found set out in document 173 in Allegation 1. The total value of these 4 items is Rs. 3,60,000.

B. 139. (2) Commercial Buildings.—The commercial buildings which form the next head consists of single item—a Saw Mill, Workshop, Storage Godown etc. which has been valued by Bakhshi Ghulam Hussain at Rs. 90,000 when effecting a policy against fire with the New India Assurance Co., Srinagar (Policy No. 15859614).

B. 140. (3) Vacant Plots fit for Residential and Commercial Building purposes.—There were six such plots of land, 5 of which stood in the name of Bakhshi Ghulam Hussain himself and the other in the names of his wife and sons jointly. These are :—

- (1) an extent of 1608 Sq. Ft. at Tengapora acquired by purchase from Khaliq Ganai and Mst. Zooni under 3 registered sale deeds (Documents 319 to 321 in Allegation 1 dated 22-7-2005, 13-11-2011 and 16-10-1957 respectively). The purchase price was Rs. 200+500+300+registration charges Rs. 50, total Rs. 1050;
- (2) a plot of land 14 kanals and 14 marlas in extent at Chandilora, Tehsil Baramulla purchased from Aziz Ganai, Mohamad Ganai, Mohammad Sheikh, Ahad Ganai and Khaliq Sheikh under 5 deeds bearing the same date 26th July, 1961 (Documents 322 to 326 in Allegation 1) for a total consideration of Rs. 5,223;
- (3) a plot of land 5 kanals and 4 marlas in extent purchased from one Gani Lone under deed (Document 327 in Allegation 1) dated 26th July, 1961 at Ferozpora, Tehsil Baramulla for Rs. 517;

- (4) 11 kanals and 17 marlas of land at Dhanpora, Tehsil Bara-mulla purchased from Mst. Azizi under a deed of sale dated 28th April, 1961 (Document 328) for Rs. 2,042.

B. 141. Lastly plot No. 113 at Gandhi Nagar in Jammu obtained by allotment from the State Government measuring 130' x 60' which based on the value disclosed by document 24 in Allegation 12 would be worth Rs. 9,000 at the date of the allotment.

B. 142. We next have a plot of land in Buchwara, Srinagar of an extent of 8 kanals and 14 marlas purchased jointly in the names of Bakhshi Ghulam Hussain's wife and his 4 sons under 5 deeds of sale. The first of these deeds is dated 13th December, 1956 and under this deed 2 kanals and 2 marlas were purchased for Rs. 5,000. Later under 4 deeds dated 19th October, 1962 the balance of the property was purchased for Rs. 35,000 odd, making a total purchase price of rupees 40,512. The total value of the 6 plots, therefore, comes to Rs. 58,344.

B. 143. (4) *Investments in Business.*—Bakhshi Ghulam Hussain was a partner in the Indo-Kashmir Timber Traders entitled to a half share. What is here being taken into account are merely :—

(1) his half share in the security deposit made by the Firm with the Forest Department which comes to Rs. 8,172.

(vide J & K Bank FDR 5862	Rs. 7,299-59
FDR 10640	9,044-16
	Rs. 16,343-75
	2
+	8,172

(2) the value of 2 vehicles owned by the Firm, a Studebaker Truck of 1956 model (registration No. J & K 5233) purchased in 1961 valued at Rs. 3,200, after allowing for depreciation, his half share is being taken at Rs. 1,600. The other a Bedford Truck of 1961 model (registration No. JK A 337) which has been valued at Rs. 15,000 and his half share being taken at Rs. 7,500. Total of the three items Rs. 17,272.

B. 144. (5) *Personal Movables including Vehicles.*—Besides these assets Bakhshi Ghulam Hussain had personally 9 vehicles, the total value of which has been estimated by the Government at Rs. 1,53,428-15. NP. The details of these vehicles are :—

- (1) Bedford truck 1963 model (registration No. JK A 3396) purchased on 9th July, 1963, purchase price Rs. 32,595.
- (2) A Fiat Car 1961 model (JK A 3233) valued at Rs. 11,433-15 NP (after allowing for depreciation).

- (3) A Studebaker truck 1965 model (J & K 5231) original price Rs. 16,346 but after allowing for depreciation valued at Rs. 3,200.
- (4) Another Studebaker truck 1955 model (J & K 5074) similarly valued at Rs. 3,200 after allowing for depreciation.
- (5) A Chevrolet truck (J & K 3515) purchased in 1954 and, therefore, has been treated as of no value. The whole price assumed to be taken up by depreciation.
- (6) A Willys Jeep 1962 model (JK A 2474) valued at Rs. 12,000. This being based upon the value given by the assured in a comprehensive policy taken out by him with the New India Assurance Co., Srinagar (vide Policy No. 458590124).
- (7) A Bedford truck 1960 model (J & K 9661) valued at Rs. 35,000. This again is being based on the value fixed by Bakhshi Ghulam Hussain when effecting insurance with the New India Assurance Co., of this vehicle (vide Policy No. 90646. This policy is dated 28th June, 1962 and vehicle was valued at Rs. 36,000.
- (8) Another Bedford truck of 1960 model (JK A 30) valued at Rs. 22,000, the same value as given by Bakhshi Ghulam Hussain in the policy that he has taken out with the Motor and General Finances Delhi on 14th June, 1963 on this Car (vide Document 173 in Allegation I).
- (9) A T.M.B. truck 1961 model (JKA 418) valued at Rs. 36,000 again based upon the valuation of the assured in the policy that he took out with the Motor General Finances Delhi on 1st July, 1963 in respect of this vehicle (vide Document 173 in Allegation I).

B. 145. The total value of these vehicles comes to Rupees 1,53,428-15 NP.

B. 146. The total of the assets of Bakhshi Ghulam Hussain and his family under the 5 heads set out above comes to Rs. 6,79,044.

B. 147 The grand total of assets of these nine branches comes to Rs. 1,44,48,634, which is very near the figure of 1½ crores of rupees mentioned in Allegation I.

B. 148. In making these estimates, I should add that as would have been seen, I have taken into account only the prices paid for the value of the immovable properties purchased and not their market value in October, 1963 and it is hardly necessary to advert to the sharp increase in land values particularly in Urban areas after 1958 and more so after 1960. Besides I should add that it is possible that there are some debts owing by these groups, which it has not been possible to ascertain particularly because the respondent and the other members of

his family to whom notices were issued under Rule 6(1)(a) did not file replies to the statements and documents in Allegation 1 in which details of these assets were set out. There is, however, a greater possibility that there might also be other bank accounts, deposits, loans, shares, jewels and other movable properties of these members which the Government have not been able to ascertain and I believe these might not merely cancel any debts owing but would work in favour of the respondent.

B. 149. In addition to these tangible assets the several branches of this family had flourishing a prosperous businesses, which have also to be taken into account if one has to compute fully the assets and "pecuniary resources" of the members of the family set out in Part "A" of Schedule I.

B. 150. Taking first the family of Bakhshi Ghulam Mohammad, his son Bakhshi Bashir Ahmed along with certain of the other members of the family was the proprietor of Fair Deal Motors, Srinagar which held the agency for T.M.B. Trucks, Lambretta Scooters etc. for Kashmir. This business commenced in 1957 and has been continuing ever since. From the year 1958 onwards the net profit as per the income tax records which are available for the assessment years 1958, 1959 and 1960 works out to an average of Rs. 1,50,000 per year. The figures for 1961, 1962 and 1963 are not available, since it is stated that the assessments have not been completed. Taking the annual average profit during 1958-1963 at Rs. 1,50,000 per year this would be some indication of profitable nature of this business. Computing the purchase value of this business even on the basis of 5 times the annual profits, its value in 1963 when the respondent ceased to be the Prime Minister would come to Rupees 7,50,000.

B. 151. Bakhshi Bashir Ahmed was besides the proprietor of Nav Bharat Transporters which had a contract with Telcos Jamshedpur for "drive away" of their vehicles from Jamshedpur to Srinagar. Before proceeding further I have to state that Bakhshi Bashir Ahmed contended in the reply which he filed in Allegation 25 that he had nothing to do with the firm of Nav Bharat Transporters and that it was an independent concern of some strangers with whom he had no concern. I have, however, found that this story was untrue and that Bakhshi Bashir Ahmed was and is the real owner of this concern. It is on the basis of this finding that I am including the value of the business of Nav Bharat Transporters as among the assets of Bakhshi Bashir Ahmed. The exact profits made by this concern are not available but having regard to the number of vehicles which the firm "drives away" I would estimate its annual profit at Rs. 20,000. The contract is still continuing. Computing at 5 years purchase, the value of this business would come to Rs. 1,00,000.

B. 152. The last item of business to be referred to in connection with this group is the business called the Kashmir Hotels under which the hotel business at Srinagar and Gulmarg of the Nedous Hotel was conducted. The figure of profit made by this concern up to 1963 when Mst. Yasmin Bakhshi entered on the scene is not available and I suspect that these are withheld by Mst. Yasmin Bakhshi. Nor has she produced

the accounts or balance sheets of Kashmir Hotels since 1st of November, 1963. However, on the basis of an investment of Rs. 3,30,000/- made by Bakhshi Bashir Ahmed in the name of Mst. Yasmin Bakhshi in this concern, I would compute the annual profits at Rs. 62,000/- and the value of the business under which the buildings in which hotels are being run have been leased to Mst. Yasmin Bakhshi and her partner for a period of 20 years at Rs. 6,00,000/- based on a 10 year purchase, taking into account the period of lease.

B. 153. Pausing here I should make one observation. Technically no doubt the partnership consisting of Mst. Yasmin Bakhshi and Harry Nedou took over the business of Nedous and Son from Willy Nedou only on 1st of November, 1963 and this date is subsequent to Bakhshi Ghulam Mohammad ceasing to be the Prime Minister. But I have taken this item of asset into account for the reason that the agreement between Mst. Yasmin Bakhshi and Harry Nedou came into existence even prior to 15th of June, 1963 when it rested merely on an oral agreement and that it was reduced to writing in July, 1963 immediately after the Government passed an order recognizing the transfer of Nedous Hotel to Harry Nedou who in this transaction admittedly represented Mst. Yasmin Bakhshi and obtained a lease of the buildings constituting Nedous Hotels at Srinagar and Gulmarg for a period of 20 years. It is in view of this feature that I have included this item among the assets of Mst. Yasmin Bakhshi falling within this group.

B. 154. Coming next to Bakhshi Ghulam Nabi, he was partner in or proprietor of concerns in several names which had contracts with the Forest Department in regard to leases of forests for cutting timber. These include Tasneem and Co., Ghulam Nabi Ghulam Rasool, Ghulam Nabi Noor-ud-Din, Ghulam Nabi Noor-ud-Din and Co., Haji and Co., Fair Deal Forest Co., Exceptly possibly Tasneem and Co., the rest were earning decent profits and were taking lucrative contracts from the Forest Department of the State Government. It was in connection with these forest contracts that Bakhshi Ghulam Nabi owns and possesses the property at Pathankote which is the rail head for transporting timber outside the State. As the Government have placed no material before me in order to ascertain the contracts which these Firms had with the State Government or their other businesses, or as regards their value, the extent to which the contracts had been performed and other details in order to ascertain the pecuniary value of these businesses in October, 1963 I have not ascribed any value to them and of course not taken such value into account. Similar is the case with the Fair Deal Motors Indore which held sole agencies for several types of motor vehicles including Ashok Lylands for Madhya Pradesh. This must obviously have been a profitable concern. In this Indore business Bakhshi Ghulam Nabi had a 75% share, the other 25% being the share of certain strangers Mr. and Mrs. B. K. Bedi. As the value of workshop etc. in connection with this business has been put to Rs. 5,00,000/- the business must have been quite a prosperous one but as in the case of Ghulam Nabi's forest concerns no material has been placed before me to determine the pecuniary value of this business in October, 1963.

B. 155. The next item of business in which Bakhshi Ghulam Nabi was interested was the Sheraz Cinema at Srinagar. Here again though the Government have placed before me the value of the theatre with furniture and fittings etc. they have not placed any material as regards the revenue derived from this theatre for the purpose of evaluating its value as a business. But in this case, however, since it is known that the cost of construction of Cinema building together with the furniture and fittings totals Rs. 9,25,000/- one would not be far wrong if the returns from the business were assessed at 20% of this investment which would come roughly to 18000/- and taking it at 10 years purchase the value of the business would come to Rs. 1,80,000/- and Bakhshi Ghulam Nabi's share which was 75% would come to Rs. 1,30,000. Putting it at the lowest it would be at least Rs. 1,25,000.

B. 156. The next group whose assets in the shape of business have to be referred to is Bakhshi Abdul Majid and his family. The first item of business of Bakhshi Abdul Majid is Feroze and Co., which was originally started in or about 1948 as a family concern in which all the members of the family had interest. The business of Feroze and Co., as a family concern was terminated on 31st December, 1960 by a mutual agreement which ultimately took the form of an award of an arbitrator and after 1st of January, 1961 Feroze and Co., became the sole property of Bakhshi Abdul Majid. Bakhshi Abdul Majid was having contracts for supply to the army which incidentally was the type of business with which the concern originally commenced. This concern continued its business right beyond October, 1963 and at the end of October, 1963 had a credit balance of Rs. 2,691-23 in its current account with the United Commercial Bank. The Government have not placed before me any material which would enable me to value this business in October, 1963.

B. 157. The next item of business run by Bakhshi Abdul Majid were the two Cinemas—Regal and Amrish—which were purchased by him in 1950 and then reconstructed with furniture, fittings and equipment being newly put in. Though Bakhshi Abdul Majid was running the business of exhibition of films in these theatres, he valued the property in his income tax returns under the head property under section 9 of the Indian Income Tax Act 1922 and claimed to have been derived from it an income of Rs. 29,000 per year as rent and this appears to have been accepted by the Income Tax authorities and his income determined accordingly. This has happened for quite a long time. It does not need any argument to show that if he was running the theatres himself, his profit must have been several times the rental which he claimed as his return from the property. In this connection, I might mention that in the declaration which Bakhshi Abdul Majid filed on 28th February, 1956 in response to an invitation to disclose concealed incomes published by the Government of India in a Press Communique issued in December, 1955 Bakhshi Abdul Majid submitted a voluntary disclosure of statement (Document 21 in Allegation 1). In this he disclosed about Rs. 13,00,000 as having been concealed by him earlier and which he was bringing into his account in 1954-55. In regard to the building and equipment of the Regal and Amrish Cinemas he put his investment at Rs. 2,78,000 as against Rs. 1,50,000 for which the property had

been purchased (vide Document 1 in Allegation 1). I believe the rest of the amount namely Rs. 1,25,000 might have been in part a portion of the income earned by him during the previous years which he had not brought into account. There can be no doubt that in October, 1963 which is the date with which we are concerned, the 2 Cinemas were very prosperous businesses, having practically no competitor in the field except the Palladium theatre. Though these two theatres were burnt by the mob during the relic agitation in Janaury, 1964 that is irrelevant for the purpose of considering the value of the theatres and their profit yielding capacity in October, 1963. But as to this again the Government have placed no material before me to compute its value, by even adducing evidence as to the seating capacity of each theatre, the rates charged for each type of seat and the No. of seats of each grade in the theatre. Except, therefore, noting that there were these 2 assets whose value might amount to some considerable figure, I am unable to say anything more.

B. 158. The next item of business assets owned by Bakhshi Abdul Majid was Kashmir Motors. This firm included a strange partner in one Kh. Ali Shah, besides 3 members of the Bakhshi family, Bakhshi Bashir Ahmed, Bakhshi Ghulam Ahmed and Bakhshi Ghulam Hussain. This Firm held the dealership agency of Hindustan Motors for the Kashmir province. This continued for about 4 years till 31st December, 1960 when in place of Bakhshi Bashir Ahmed and 2 others the share of the family was allotted to Bakhshi Abdul Majid in December, 1960. During the period when Bakhshi Bashir Ahmed was the partner, returns were filed by the firm for income tax purposes and from these it is seen that during the period of 6 years each of the partners had earned Rs. 22,000 a year. In the absence of any other evidence one might safely proceed on the basis that for the years 1962 and 1963 and thereafter the same rate of profit at least could have been obtained though owing to increase in the price of the vehicles the amount of profit earned which is a percentage of the total cost might be higher. The result of these figures is that the share of Bakhshi Abdul Majid in the partnership would be worth Rs. 65,000 per year and even on the basis of 5 years purchase the value of the business would come to Rs. 3,25,000.

B-159. The text item of business is that carried on in the name of Kashmir Oil Co. In this Bakhshi Abdul Majid obtained in the name of his minor son Anwar Aftab a grant of 2 kanals of land for locating a petrol pump at Bonamsar, Srinagar. Bakhshi Abdul Majid as guardian of his son Anwar Aftab entered into an agreement with the Burmah Shell Co., on the 20th of June, 1962 (Document 27 in Allegation 11) by which the land obtained was leased to the Company at Rs. 100 a month, the Burmah Shell having to erect installations for the pump. The rent, however, was inclusive of taxes payable on the property which would include the ground rent payable to the Govrenment under the lease, which was Rs. 20 per marla, totalling Rs. 800 per year. It would, therefore, leave Rs. 400 per year as a rental derived from the property. As, however, the lessee had paid Rs. 4,000 as premium for acquiring the lease and as this premium has been taken into account

for estimating the value of the petrol pump site, I do not think it necessary to add anything more as the value of the business of the Kashmir Oil Co.

B. 160. The next items of business asset of Bakhshi Abdul Majid was Kathua Motors, Jammu. This was a partnership which was composed of Bakhshi Abdul Majid and a stranger Bakhshi Hardut. This partnership was started on 15th August, 1955. They were the sole dealers for M/s Hindustan Motors Calcutta for the Jammu Province. Under the arrangement came to in the family at the end of December, 1960 and reflected in the award of Mr. J. N. Bhat, the interest of the family which was represented by Bakhshi Abdul Majid was allotted to him solely. Obviously this must have been a very profitable business as seen from the statement of account of the firm with the United Commercial Bank but the Government have led no evidence and placed no material before me to estimate even roughly the value of this business.

B. 161. JK Automobile, Srinagar was the next item of business asset belonging to Bakhshi Abdul Majid. It was started in December, 1956 with himself and his wife representing his family and 4 other strangers as partners. They were the sole dealers for Leyland vehicles and Exide batteries for the Kashmir province of the State. Here again the business which has continued right from 1956 up to date must have been a very profitable one but I am unable to estimate the value of this business by reason of Government not placing any material before me for estimating the profits from this business. Within a very short time after JK Automobile, Srinagar was started, M/s JK Automobile Jammu was commenced in 1957. Here again Bakhshi Abdul Majid and his wife with 3 other strangers were the partners of this concern. They were the sole dealers of Leyland vehicles and Exide batteries for the Jammu province. Owing to the absence of any information or the material regarding profits earned from this business I am unable to estimate the value of the business in 1963.

B. 162. The Government along with their statement of the case in regard to Allegation 1 filed as appendix 8, a list of firms which according to their information which were owned by the members of the family of Bakhshi Ghulam Mohammad set out Part "A" of Schedule I to the Notification, but in regard to which they had no information as to whether these concerns were the sole propriety business of the members of the family or were owned by them in partnership with others and also as regards the nature of the business done as well as the assets owned by the said business. Among the businesses thus listed was Fair Deal Builders. In regard to this concern, however, Bakhshi Abdul Majid in the reply that he filed in Allegation 14 in regard to which he was given notice under Rule 6(1)(a) he stated that he entered into a partnership with Shri Abdul Gani Bhat and others under the name of M/s Fair Deal Builders. He added that the deed of partnership was drawn on 29th October, 1959 and the firm was registered with the Income Tax Department. This fact is confirmed by the respondent himself in his reply in Allegation 14 paragraph 17. From this statement it appears

as if the partnership was subsisting even up to 1963 but as the Government have not been able to ascertain details about this Firm and the nature and amount of assets belonging to it, I am unable to estimate the value of this business in 1963.

B. 163. Besides the above there were as many as 10 firms which were floated by Bakhshi Ghulam Mohammad's family members mentioned in Part "A" of Schedule I in respect of which the Government themselves have filed a statement in which they state that they had not been able to ascertain either the names of the partners, the nature of the business, their assets or their profitability. These are :—

- (1) Commercial Finance Corporation, Srinagar
- (2) Wali Mohammad & Sons.
- (3) Timber Traders
- (4) Ghulam Hussain and Co.,
- (5) B.G. Construction, Bombay
- (6) Bakhshi Ali Mohammad and Co.,
- (7) United Motors Services
- (8) Fair Deal Builders regarding which I have already commented when dealing with the assets of Bakhshi Abdul Majid.
- (9) Ghulam Mohammad Malik and Co.,
- (10) Syed and Co.,

B. 164. It would be seen that besides the assets which the Government have included in their several statements in Allegation No. 1 which total over Rs. 1.44 crores there have been other businesses, five of which alone would appear to be worth Rs. 19,00,000. There are moreover several others which it has not been possible to ascertain or evaluate. In the circumstances I consider that it would not be wrong to estimate the total assets of the members of the family of the respondent set out in Part A of Schedule I in October, 1963 at over Rs. 1 crore and 60 lakhs.

B. 165. I have appended hereto for ready reference a tabular statement setting out the known, verifiable and verified tangible assets whose details I have discussed earlier. In regard to this Tabular Statement I have to repeat certain matters to which I have already adverted. In the first place in regard to lands purchased for residential and commercial purposes by the several members of the various groups, I have taken into account only the figures for which they were purchased or their market value on the date of purchase, though it is obvious that in the case of some—particularly in the case of the purchases made by Abdul Majid in the Residency Road, Srinagar their values have gone up by nearly 10 times. Similar would be the case of the land purchased in Sonawar in the name of Ghulam Nabi from Mrs. Mukerjee. I am saying this because the notification requires an ascertainment of the value of the assets held by the several members of the family in October, 1963.

I have to add that I have adopted this line, though in dealing with movable properties in the shape of the motor vehicles owned by the several members I have taken only their depreciated value as in October, 1963 and in several cases for the same reason have treated them as having no value. Next, in several cases I have omitted from consideration the value of the sites of buildings where they have been constructed on the purchased sites (see for instance paragraphs B. 19 page 57, B.20 page 58, B. 42 page 63, B.44 page 64, B. 60 page 68, B.111 page 79, B 135 page 83, B. 136 page 83 and B. 138 page 84). In estimating the value of the fittings and fixtures as well as in ascertaining the value of most of the buildings I have ascribed to them only the values that have been put on them by their owners when taking out policies of insurance. I am making reference to these features in order to show that the estimates of the value I have made err, if any, greatly in favour of the respondent, by reason of the method adopted for valuing the assets.

B. 166. Lastly I have to add that the Tabular Statement includes only the tangible assets and does not include intangible items as the value of running businesses which in the case of 5 regarding which alone there was some material, I have held were worth on the whole Rs. 19 lakhs.

B. 167. I shall now proceed with a consideration of the second 'matter' or question to inquire into which this Commission was constituted.

**STATEMENT REGARDING THE ASSETS OF BAKHSHI
SET OUT IN PART "A" OF SCHEDULE I**

S.No.	Name	Residential Buildings	Commercial Buildings
1.	Bakhshi Ghulam Mohammad and his family	.. 7,06,669	7,55,000
2.	Bakhshi Ghulam Nabi and his family	.. 4,27,037	12,53,143
3.	Bakhshi Ali Mohammad	.. 59,500	..
4.	Bakhshi Wali Mohammad and his family	.. 1,25,105	1,15,216
5.	Bakhshi Abdul Majid and his family	.. 99,079	31,27,226
6.	Bakhshi Abdul Hamid and his family	.. 3,82,432	..
7.	Bakhshi Abdul Rashid and his family	.. 4,74,220	..
8.	Bakhshi Ghulam Ahmed and his family	.. 80,000	..
9.	Bakhshi Ghulam Hussain and his family	.. 3,60,000	90,000
		<u>27,14,042</u>	<u>53,40,585</u>

**GHULAM MOHAMMAD AND THE MEMBERS OF HIS FAMILY
TO THE NOTIFICATION.**

Vacant Plots Building Land	Investments in Business	Movable pro- perty including Vehicles etc.	Cash and Bank Balances	Total
1,98,691	12,15,138	1,09,109	4,16,638	34,01,245
1,32,022	4,52,040	17,360	1,10,257	23,91,859
..	..	..	..	59,500
3,474	40,000	..	..	2,83,795
7,42,604	1,75,400	7,03,000	14,68,417	63,15,726
23,423	..	12,000	24,130	4,41,985
97,716	1,00,000	13,000	..	6,84,936
17,465	75,000	2,500	15,579	1,90,544
58,344	17,272	1,53,428	..	6,79,044
<u>12,73,739</u>	<u>20,74,850</u>	<u>10,10,397</u>	<u>20,35,021</u>	
Grand Total ..				1,44,48,634

REPORT

PART III

**Discussion on Matter or Question (ii)
Together with
Findings on Allegations I to 38
In Schedule II to the Notification**

PART—III

Question (ii)

1.1. I shall now proceed to deal with the second question or "matter" which by the notification I have been called upon to inquire into and report. This reads :—

"Whether between October 1947 and October 1963 Bakshi Ghulam Mohammad, the members of his family and his other relatives mentioned in Part 'A' of the First Schedule hereto, and the relatives of Bakshi Ghulam Mohammad and other persons mentioned in Part 'B' of the First Schedule hereto obtained any assets, pecuniary resources or advantages or other benefits by Bakshi Ghulam Mohammad abusing the various official positions held by him or by the aforesaid members of his family, his other relatives and persons exploiting, with his consent, knowledge or connivance, the various official positions held by him.

"In making the inquiry into the matters at (ii) above, the Commission shall examine only the allegations set out in the Second Schedule hereto".

Pausing here, I shall indicate a certain anomaly or inconsistency arising out of the language used here. From the collocation of the two "matters" which are to be the subject of enquiry it might look as if the answer to the first "matter" having determined the nature and extent of the assets and pecuniary resources of the respondent and of the members of his family etc. mentioned in Part 'A' of the First Schedule on two dates separated from each other by 16 years during which period the respondent held the offices of Deputy Prime Minister and Prime Minister, the second "matter" to be inquired into was whether this increase in the amount of the assets and pecuniary resources of the family was attributable to items of the abuse of power on the part of the respondent listed in Schedule II and indeed that seems to be the basis of Allegation 1 in Schedule II which in a sense presents in summary from the Government's case regarding the financial result of allegations 2 to 38 of that Schedule. But when one looks at the language used in "matter (ii)", it refers to the assets, pecuniary resources etc. not merely of the members of the family mentioned in Part 'A' but also of the relatives and other persons mentioned in part 'B' of the First Schedule. The subject or the substance of matter No. (ii) is therefore not confined to the same area or to the same persons as are dealt with in question No. (i) and to the acts and conduct of or in relation to the persons set out in Part 'A' of Schedule I, but extends further and includes also the

relatives mentioned in Part 'B'. I am pointing this out because under matter No. (i) no inquiry is contemplated as regards the assets or pecuniary resources of the relatives and other persons mentioned in Part 'B' of Schedule I either in October 1947 or as they stood in October 1963, though the pecuniary advantages obtained by this group between these two dates by reason of certain instances of abuse of power are required to be inquired into in the second "matter". I should, however, hasten to point out that this really makes little difference in the result because, the allegations in which these other relatives listed in Part 'B' of Schedule I figure, are only Allegations 12, 14 and 37 dealing respectively with the allotment of certain house sites in Srinagar, and the failure to pay the bills of Abdul Gani Bhat for certain constructions, and the allotment of a Fiat car out of the State quota.

1.2 With these preliminary observations I shall proceed to discuss the case of the Government as regards the items of abuse of power on the part of the respondent by which he and the members of his family and the relations mentioned in Part 'A' and 'B' of Schedule I are stated to have obtained pecuniary advantages and determine the extent thereof in those cases where I hold that an abuse of power has been made out.

1.3 In recording my findings as regards the first "matter" or question, I have stated that in or about October 1947 the respondent and the members of his family listed in Part 'A' of Schedule I were altogether deriving a total income of about Rs. 850/- per mensem or thereabouts, and that the total immoveable property owned by all of them put together could not have exceeded Rs. 10,000/-. (See Part II Paragraph 'B'). The only business in which most of the members of the family then appear to have been engaged in was in dealings in fur which was carried on in the name of Bakshi & Co., Srinagar, while a couple of them appear to have been employed in Government offices on low paid jobs. This was the answer to first part of the matter No. (i) and I have found that in October 1963 these same members were definitely proved to have possessed tangible property of the total value of Rs. 1,44,48,634/- whose details also I have discussed and set out. (vide Part II Paragraphs 'B') 12 to B. 147.

1.4 Shortly stated "matter" No. (ii) requires me to examine whether between these two dates the respondent and members of his family etc. obtained financial advantages by abuse of power on his part in the manner set out in allegations 2 to 38 in schedule II read with the note to question (ii). These 37 allegations are not arranged on any logical basis, nor are they even set out in chronological order so as to be dealt with on that footing. An examination of these allegations in the order in which they are found in the notification would not, therefore, furnish any proper picture of the relationship

between the abuse of power and the acquisition of wealth by the several members of the family which, I take it, is the main object of this inquiry. In view of this, the method I propose to adopt in considering "matter" No. (ii) is to trace for the most part the history of the family's fortunes so far as the same is gatherable from the documents filed before me, and while doing so, deal in their appropriate places and contexts with the charges contained in the allegations listed in Schedule II.

1.5 This history of the fortunes of the groups listed in Part 'A' falls into three distinct periods. The first comprises the period from the beginning of 1948 to 1956. As I shall show presently, this was the period when a firm by name Feroze & Co. which was stated on behalf of the family by Abdul Majid—younger brother of the respondent—for effecting supplies to the Army, yielded enormous profits and provided funds for the purchase of valuable immovable properties. Among the items of property thus acquired were two cinema houses in 1951 which greatly augmented the income and contributed to the affluence of the family though the income from this item does not appear to have been shared by the other members.

1.6 The second period was between 1957 to the end of 1960. During this period there was considerable diversification in the range of the business activities of the several senior members of the family. New concerns were started, as subsidiaries of Feroze & Co. and some even independently for their own benefit by some groups; some were partnerships confined to the members of the family and others were partnerships with strangers—the family members who were partners doing so on behalf of Feroze & Co. The principal lines of business in which this expansion took place were agencies for petrol pumps, agencies for automobiles and automobile products and accessories, and forest contracts. The securing of the agency for Tata Locomotive & Engineering Co. in 1957 by Fairdeal Motors, Srinagar—a subsidiary of Feroze & Co.—constituted a great step forward and thenceforward this agency was the main money earner for the family, the manner in which this agency was obtained forming one of the principal charges against the respondent.

1.7 This very expansion, and the disproportion between the profit earning capacity of the several businesses, coupled with certain other personal factors seem to have brought about disharmony in the family and differences between the several members which came to a head towards the end of 1960 when the firm of Feroze & Co. along with its several subsidiaries was dissolved by mutual consent and different businesses were allotted to the several groups by an amicable arrangement which was given legal form by the award of an arbitrator.

1.8 The last period from the end of 1960 to October 1963 was the time, when after the disruption of the family businesses, each group carried on business for its own benefit. A considerable number out of the 37 charges of abuse of power crowd together in this period of about three years and these charges consist in great part of improper assistance afforded to four groups which were very close to the respondent—his son Bashir Ahmed, his brothers Abdul Majid and Ghulam Nabi and his cousin Abdul Rashid the last of whom besides being his close relation was also the Secretary of the ruling party, the National Conference.

1.9 In view of this feature, I propose when dealing with this last period to depart from the chronological order in which I would be dealing with the allegations which relate to the first two periods and examine these with reference to each group as being at once more convenient and as affording a better picture.

1.10 With these introductory remarks, I shall proceed to narrate the history of this family from the time when the respondent assumed office as the Deputy Prime Minister of the State.

1.11 October 1947 was the time of the tribal raids into the Valley and the family does not seem to have suffered any loss on that account. The next relevant date is the first half of 1948 when the respondent became the Deputy Prime Minister under Sheikh Mohammad Abdullah as the Prime Minister of the State. It was at this period that Bakshi Abdul Majid, younger brother of the respondent, made up his mind to enter into the Army contract business.

1.12 From February to May 1948 there were admittedly negotiations between Abdul Majid (who appears to have been the live wire of the family in business matters) and one Mr. P. A. Roamer who had even prior thereto been carrying on business as a military contractor by supplying goods to the Army. Abdul Majid first became partner with Roamer in the latter's business of P. A. Roamer & Co and soon thereafter, the two partners started business in a new name Feroze & Co. and later in another name Munshi & Co.

1.13 After the accession of Kashmir to India and the stationing of troops with their headquarters at Srinagar in the beginning of 1948, the business of supplies to the Army appears to have become very lucrative. A large part of the wealth of the respondent's family at this period and for quite long time thereafter is seen to have been derived from the profits (disclosed as well as undisclosed) earned by a firm which was started in or about the middle of 1948 under the name of Feroze & Co. This firm which originally consisted of Bakshi Abdul Majid and Mr. P. A. Roamer each with an equal share, was registered on

1st July, 1948 vide Serial No. 514/10 Entry 7 of Register of Firms for the year 1948 which is Document 1 in allegation 18. This firm underwent changes to its composition to which I shall refer in detail later, but before doing so, it is necessary to refer to the circumstances in which Bakshi Abdul Majid and Mr. P. A. Roamer were brought together into partnership relation.

1.14 As stated earlier, before this partnership of Feroze & Co. was formed in the middle of 1948, though there does not appear to have been any deed evidencing it, Bakshi Abdul Majid had become a partner with Mr. Roamer in P. A. Roamer & Co. the business which the latter was till then carrying on as sole proprietor. It is the case of the Government that very soon after the respondent became the Deputy Prime Minister of the State, he abused his power and misused his influence to induce Mr. Roamer to take Bakshi Abdul Majid into partnership in the military contract business, as a result whereof the partnership concern of P. A. Roamer & Co. and later Feroze & Co. came into existence and this is the subject-matter of Allegation 18.

1.15 Learned counsel for the Government laid considerable stress on this allegation for the reason that if the Government succeeded in establishing that Mr. P. A. Roamer was unduly influenced by the respondent to take his brother into partnership with him, they would have been in a position to show that the considerable gains and assets derived from Feroze & Co. which continued as a family concern from 1948 to the 31st December, 1960, were attributable directly or indirectly to an abuse of power on the part of the respondent. I am, however, not satisfied owing to the complete absence of acceptable material that Government have established their case. Before however recording a finding on this allegation, I shall proceed to consider the material placed before me.

1.16 Allegation 18 reads thus :

"By the abuse and exploitation of the official position of Bakshi Ghulam Mohammad Mr. P. A. Roamer who held a contract for supplies to the Army, was induced to take in Bakshi Abdul Majid as his partner he (P. A. Roamer) was later on forced to go out of the partnership".

It would be seen from the above that it is made up of two parts which are distinct :

- (1) that the respondent had by abuse and exploitation of his official position induced Roamer to take his brother Bakshi Abdul Majid as his partner ; and
- (2) that later on Roamer was forced to quit the partnership.

1.17 After the Government filed the Statement of the Case along with the documents and affidavits in support thereof, when the matter was taken up for preliminary hearing on 21-6-1965 for considering whether any sufficient case had been made out by the affidavits and documents justifying the calling upon the respondent to submit his answer, I held that the affidavits and documents did not support the Government case as regards the second part of the charge, namely, that Roamer was forced to go out of the partnership by reason of any act or conduct on the part of Bakshi Ghulam Mohammad. The respondent was, accordingly, required to answer only the first part of the charge and he as well as Abdul Majid to whom notice had been given under Rule 6(1)(a) have filed replies denying the charge.

1.18 The case as regards the first part of the charge may best be seen from the following extract from the affidavit of Mr Roamer on the basis of which notice had issued to the respondent. In paragraph 3 of the said affidavit Roamer stated:

"Abdul Majid approached me in early summer of 1948 and requested me to take him as a partner in Army contracts business and in this connection he took me to the residence of Bakshi Ghulam Mohammad....
..... and there the question of partnership was discussed in presence of Bakshi Ghulam Mohammad. I told Bakshi Abdul Majid that he could join me as a partner in the Army contracts business provided he invests sufficient amount of money to run the business jointly. Bakshi Abdul Majid told me that he had no funds to invest but assured me of all possible assistance I refused to take him as a partner on these terms".

1.19 Then in paragraph 4 of his affidavit he says :

"After a few days Bakshi Ghulam Mohammad sent me a message and I contacted him at his residence where Bakshi Abdul Majid was also present. Bakshi Ghulam Mohammad told me that in case I would take Bakshi Abdul Majid as a partner he (Bakshi Ghulam Mohammed) would give us all possible assistance... .. and would see that the business flourishes and stands on a firm footing. He also told me that he would use his influence and good offices to get army contracts and would also facilitate supplies to be made by them to the Army. In spite of these assurances of Bakshi Ghulam Mohammad I was reluctant to take Bakshi Abdul Majid as partner without investment but Bakshi Ghulam Mohammad insisted and repeated the assurances and promises and therefore I was induced to accept the proposal of taking Bakshi Abdul Majid as a partner".

1.20 On the other hand Abdul Majid in his reply states, that far from his attempting to force himself into Roamer's business, it was really Roamer who tried to induce him to join him, and that though he was unwilling to do so at first, for the reason that Roamer had absolutely no working capital to run the business, he was later persuaded to agree. Mr. Khambata learned counsel for the Government desired me to weigh the relative probabilities of these rival versions and to accept the story spoken to by Roamer as being more likely. He further stressed that as Roamer had been in the military contract business earlier, and had contacts with the army authorities and had experience in the line, compared to Abdul Majid who was a newcomer, the probabilities were overwhelmingly in favour of the Government version. I am not persuaded that judged even on the basis of probabilities, the version of P. A. Roamer is so overwhelmingly convincing as demanding acceptance. Abdul Majid as the brother of the Deputy Prime Minister of the State, could certainly have been sought after for the status, position and prestige that he brought to the firm. Besides, as stated earlier, I do not propose to decide these charges on the basis of facts stated in affidavits which are not fully supported or borne out by unimpeached documentary evidence unless the deponents were examined, with the respondent having an opportunity for cross-examination. There are admittedly no documents to support the case of the Government, nor was any witness called to substantiate the story put forward by Roamer.

1.21 It was, however, said that Roamer had after swearing to the affidavit filed in this allegation, left for Pakistan and that his whereabouts were not known. I am not satisfied that if an attempt were made to locate him, it would not have been possible to obtain his presence. Besides, since learned counsel stated to me on the 4th September 1966 that Government did not propose to adduce any oral evidence in respect of any charge, I take it that this would apply to the charge now under consideration as well. I, therefore, hold that Government have not been able to establish that there was any impropriety involved in Abdul Majid and P. A. Roamer entering into partnership either as P. A. Roamer & Co. or as Feroze & Co. In these circumstances, the question of abuse of power on the part of the respondent would hardly arise.

1.22 That Abdul Majid and P. A. Roamer became partners in P. A. Roamer & Co. or in Feroze & Co. is not denied, but what is denied is that this came about due to the interference of Bakshi Gulam Mohammad in the manner set out above. This having been denied in the absence of any corroborative evidence either documentary or oral evidence subjected to cross-examination, I do not propose to accept the statement in the affidavit of Roamer as material for holding the charge established.

1.23 The statement of the case as well as the affidavit of Roamer mention certain further facts in relation to the manner in which Abdul Majid improperly got possession of all the funds of the partnership as well as all the firm's books of account and as to how Roamer suffered financial ruin by the failure on his part to produce the accounts as a result whereof his income-tax came to be assessed at a huge figure on the basis of an estimate and how subsequently he got some relief by approaching the High Court. I am not, however, concerned to inquire about the truth or otherwise of these allegations because they are not the subject of the charge as notified. I, therefore, omit them from consideration.

1.24 In the face of this state of the evidence I must hold that the charge as contained in Allegation 18 as notified is entirely without substance.

2.1 I shall not put aside the firm of P. A. Roamer and Company and deal with Feroze & Co. which as stated earlier, originally consisted of two partners, Mr. P. A. Roamer and Bakshi Abdul Majid each having a half share. These two seem to have started another business in the name of Munshi & Co.

2.2 Very soon after Feroze & Co. was formed in 1948 the partners seem to have become anxious and desirous of eliminating all competition in the field for we find that on the 26th August, 1948 these two partners "of Feroze & Co. and Munshi & Co." entered into a partnership with two other persons Haji Mohammad Wani and Pandit Sham Lal who had been doing business as "contractors of supplies to the military stationed and operating within the Valley" (vide Document No. 2 in Allegation 18 copy of the Partnership Deed). This new partnership was to operate from the 1st September, 1948 and the parties were to share the profit and loss in equal shares, i. e. 25% each. The special position of Bakshi Abdul Majid in this venture was recognised by his being appointed as the cashier of the partnership, the amount of capital to be contributed by each being directed to be paid to him, under proper receipts. Bakshi Abdul Majid was to maintain all the accounts and to be liable to account for all sums of income and expenditure and the partners were not during the continuance of the partnership entitled to do any business of the same nature on their own account. The duration of this partnership "was one year or during the continuance of the military operations in the Kashmir Province whichever may be earlier." It is not known how long this partnership endured, but it appears from other documents, that it ceased to be in force long before the one year term expired.

2.3 In view of the fact that all the suppliers to the army or at least the major suppliers had pooled their resources and thus had eliminated competition between them,

it stands to reason that the profits derived from Feroze & Co. must have been considerable. In fact this is borne out by the fact that for the accounting year 1948 which was the calendar year—Abdul Majid returned an income of Rs. 29,971/4/- on a supply valued at near Rs. 11 lakhs and the Income-Tax Officer assessed the firm on an income of Rs. 33,000/- (vide Document 16 in Allegation 1). This, however, was only so far as Income-Tax Officer could find out, for I shall have occasion to refer to the voluntary disclosures made later of enormous sums which would indicate that the income returned was deliberately understated.

2.4 The next event which happened in Feroze & Co. was Mr. P. A. Roamer ceasing to be a partner and this was on 26th February, 1949 (as seen from Documents 7 and 8 in Allegation 18, entries in the Register of Firms). It is this exit of Mr. P. A. Roamer that was the subject of the second part of the charge in Allegation 18 and I have already held that there was no evidence in support of the charge that he went out other than by his own volition. I have to add that at a date which is not clear, but which must be at or about this time, Munshi & Co. had also come to be owned by Abdul Majid—from which also P. A. Roamer went out—and becoming as it were a branch of Feroze & Co. (vide statement of Abdul Majid to the Income Tax Officer in relation to the assessment of Feroze & Co. for the accounting year ended December 1948).

2.5 This left Bakshi Abdul Majid as a sole proprietor of Feroze & Co. Even at this stage he seems to have been carrying on this business on behalf of the entire family consisting of the several of the groups mentioned in Part 'A' of Schedule I. The next step taken in regard to the firm, was the admission of Bakshi Mohammad Yusuf son of Ghulam Nabi into partnership with him which was on 15th June, 1949 (vide Documents 7 and 8 in Allegation 18).

2.6 It is not possible to estimate exactly the increase in the wealth of the family between the beginning of 1948 and the beginning of 1950 owing to absence of materials. During the accounting year 1949 (1. 1. 1949 to 31. 12. 1949) the firm returned an income of Rs. 16,917/4/- in its income-tax return, but the Income-tax Officer assessed it on an income of Rs. 22,000/- and for the reasons stated already, even this was an underassessment. Then we have evidence that in the early part of 1950 it had attained sufficient affluence to purchase a property for Rs. 10,000/- at Pahalgam where previously the family owned no property, from one Ahmed Shora. It was obviously intended as a summer resort for the respondent and the other principal members of the family, and within the next two years buildings seem to have been constructed on the land which, if one went by Abdul Majid's statement, must have cost Rs. 70,000/- (vide Document 21 in Allegation 1 being the voluntary disclosure statement of Abdul Majid).

2.7 It is the case of the Government that fraud, coercion and undue influence was exercised upon the vendor Ahmed Shora by the respondent to part with this property and that though the sale deeds recited a total consideration of Rs. 10,000/- and of the same having been received by the vendor, in fact no more than Rs. 2,000/- was paid and that the balance of Rs. 8,000/- was never paid. This is the subject-matter of Allegation 4 and before proceeding further it is necessary to deal with this charge.

2.8 Allegations 4 and 5 are connected together in that they pertain to the same land which is the subject of the two independent charges of misconduct. Whereas Allegation 4 is concerned with the charge of coercion etc. in acquiring the property, Allegation 5 charges the respondent with extending the area of the property by encroaching on Government and other land and then of effecting a sale of the entire property. As in their nature, they are quite distinct besides being separated by a long interval of time that it would be convenient to deal with them separately.

2.9 Allegation 4 as notified reads:--

"Shri Ahmed Shora was coerced to sell his land situated in Village Mamal (Pahalgam), measuring 14 kanals and 3 marlas, in favour of Bakshi Ghulam Nabi, Bakshi Abdul Majid, brothers of Bakshi Ghulam Mohammad, and Bakshi Bashir Ahmed S/o Bakshi Ghulam Mohammad, by two registered sale deeds effected in 1950. This sale was effected by abuse of the official position of Bakshi Ghulam Mohammad and by exploitation of his official position by his relatives with his connivance".

2.10 In view of the terms of the charge, notice was issued under Rule 6 (1) (a) to Bakshi Ghulam Nabi, Bakshi Abdul Majid and Bakshi Bashir Ahmed, besides of course to the respondent to submit their replies and to make such representations as they desired, in respect of the charge. In response thereto all of them have filed replies.

2.11 Before, however, considering their defence, I shall set out the case of the Government which might be thus summarised. Ahmed Shora was the owner of land measuring 14 kanals and 3 marlas in Mamal village near Pahalgam. He had received in or about 1950 offers to purchase 4 kanals of this land for Rs. 8,000/- which meant that the price of the land then was about Rs. 2,000/- per kanal. Having regard to its location, just across the river opposite the Club Bakshi Ghulam Mohammed desired to purchase this land, and accordingly deputed some subordinate officers to contact the owner. They did so, and Ahmed Shora expressed his willingness to sell 4 kanals provided he was given a second-hand truck owned by the Government,

which were then being sold by them for about Rs. 8,000/-. The extent of land which the vendee was interested in purchasing was then measured and was found to be 14 kanals and 3 marlas. The respondent desired to purchase the entire extent, and he directed an offer to be made to Ahmed Shora of a second-hand truck for 4 Kanals and of cash at Rs. 150/- per kanal for the excess over 4 Kanals. Ahmed Shora was agreeable, and instructions were accordingly given for preparing a sale deed on these terms. In pursuance of this arrangement Ahmed Shora was paid by the respondent an advance of Rs. 1,500/-. A petition writer who had been taken from Srinagar at the instance of the respondent to draft the necessary deed, was instructed to do so. But the sale deed as drafted, however, provided for a cash consideration of Rs. 2,700/- and nothing more for the 14 kanals odd. At the time the deed was to be executed by the vendor, the respondent was present, and just prior to execution, the vendor desired the petition writer to read the draft deed, and when he did so, found that there was no reference to the sale or delivery of the truck. He thereupon refused to execute the deed. The respondent got annoyed with Shora and tore off the deed which had been prepared and Shora returned the Rs. 1,500/- paid to him as advance.

2.12 Negotiations were, however, restarted on the next day for the purchase of the property and Shora ultimately agreed to sell the 14 kanals 3 marlas for Rs. 10,000/-. The petition writer thereupon drew up two sale deeds each for a moiety of the property for Rs. 5,000/- each. The vendees under both the deeds were Bakshi Ghulam Nabi, Bakshi Abdul Majid—brothers of Bakshi Ghulam Mohammad and his minor son Bakshi Bashir Ahmed—described, as being under the guardianship of the younger brother Abdul Majid. Each of the deeds recited that out of the consideration of Rs. 5,000/- Shora had received Rs. 4,750/- at the time of its execution, the balance of Rs. 250/- being reserved to be received before the Sub-Registrar at the time of the registration (vide Documents 5 and 6). It is not disputed that the sum reserved was paid before the Sub-Registrar.

2.3 The details of the charges made in respect of this transaction are briefly these:

1. Ahmed Shora was coerced to sell the property at an undervalue.
2. That though the two sale deeds between them provided for the payment of a total consideration of Rs. 10,000/- in fact the vendor was paid only Rs. 2,000/- and the other Rs. 8,000/- was never paid.
3. That this sale at an undervalue, and this deprivation of the vendor of Rs. 8,000/- out of the consideration even of the price as fixed, was brought about by

coercion and undue influence exerted by the respondent exploiting his official position.

2.14 Before the question of coercion raised by the third of the points is considered, it is obvious that the Government should establish (a) that the sale was at an undervalue and at a price to which the vendor did not willingly consent; and (b) that out of the consideration of Rs. 10,000/- fixed to be paid under the deeds the vendor got only Rs. 2,000/- and these I shall now proceed to consider.

2.15 It was urged that the sale was at an undervalue and for this purpose reliance was placed on two circumstances; (1) The Statement of a Patwari regarding the value of the land in the village (Document 7); and (2) Statement in the affidavit of an official of the Transport Department regarding the price charged for the sale of Chevrolet trucks by the Department in 1949-50. Document 7, however, shows that there were no sales of land in the village in or about July 1950—the date of the relevant transaction and the earliest sale thereafter being in 1960. It is obvious that no inference can be drawn from this regarding the price ruling in July, 1950. As regards the price of second-hand trucks sold by the Department Mr Ali Mohammed in his affidavit states this as between Rs. 10,000/- and Rs. 12,000/-. But in order that this might have any relevance, one should have regard to what the vendor himself estimated as the value of this vehicle. In his affidavit he says—speaking of the abortive sale—that he desired to have a used truck which was then being sold at Rs. 8,000/- and Rs. 150/- per kanal for land in excess of 4 kanals. This statement is corroborated by other deponents also—as to what he said. By the way, it might be added that this would yield a figure of about Rs. 9,500/ or roughly Rs. 10,000/- as the value he put on his property—a sum not below that for which he sold the property under the two deeds (Documents 5 and 6).

2.16 Besides, this is dependent on the acceptance of the story that there was originally a concluded agreement under which Shora was to have a used truck in addition to about Rs. 1,500/- as the price of the 10 kanals 3 marlas of land (i.e. 14 kanals 3 marlas less 4 kanals). This story of a prior agreement which proved abortive because the deed as drawn up did not embody the term regarding the delivery of the truck is stoutly denied by Abdul Majid who has filed the main reply to the facts set out in the Government's Statement of Case—the others having merely adopted it. According to him the negotiations for the purchase were on the lines of the terms set out in Documents 5 and 6, viz. a conveyance for a total cash consideration of Rs. 10,000/ and that there was no earlier infructuous deed.

2.17 The story regarding two separate negotiations—the earlier one including a reference to the delivery of a truck—is no doubt stated on oath by Ahmed Shora and certain officers

of the Government besides a petition writer and a stamp vendor. But in view of what I had already decided, I am unable to accept the truth : these statements in the absence of (a) unimpeachable documentary evidence or (b) the deponent being orally examined before me, with an opportunity for cross-examination by the respondent. As the deponents of these affidavits have not been called to the witness box, Government can establish their case only by reference to documentary evidence and this they have sought to do by relying on a note in a register maintained by the petition writer in which he enters copies of the deeds which he drafts. The first abortive transaction is stated to have taken place on 23rd Har 2007—the two sale deeds which were actually executed being dated the next day 24th Har. In this register which is called the Documentation Register on the margin of the sheet where the first of the two deeds executed on the 24th Har is copied are to be found (a) the thumb impression of Ahmed Shora crossed out; and (b) a little above the crossing, the signature of Abdul Majid and over it a statement in Urdu reading "After the document was executed, the vendor did not accept it, therefore it was not completed. Consequently the signatures were crossed and got signed by the vendor". This is relied on as corroborating, if not establishing the story of the infructuous transaction. Abdul Majid while admitting his signature, states that his signature was taken in token of acceptance of the document whose copy was entered in the register, and that this signature has been improperly utilised for authenticating the endorsement regarding an infructuous transaction which he says has been interpolated subsequently by the petition writer.

2.18 As the only piece of documentary evidence relied on in this context was the entry in the documentation register (Document 4) maintained by V. N. Kichlu, the petition writer, it became necessary to examine whether this document was properly proved. If, of course, it was a Public document within Section 74 of the Evidence Act, it would be proved by the production of the document itself. As the writer was not called to prove it, it would not be evidence unless it were a public document, and on this I felt some doubt. Mr. Khambata drew my attention to volume 5 of Judicial Circulars in which a resolution of the Council dated 11th August, 1904 is set out. Under this resolution, deed-writers are required to maintain a register in which a full copy of the deeds drafted by them is to be written. At the end of the year, these registers are to be deposited in the office of the Registrar and to be consigned to the records after signature by the Registrar. Though the petition and deed writers are not public officers with their salaries paid out of public funds, they are enjoined by law to do a statutory duty to copy deeds drafted by them in a register, the registers being deposited with a public officer. I am, therefore, satisfied that the register (Document 4) is a public document and hence is properly before me as evidence.

2.19 I do not however think it necessary to record a definite finding as to whether there was this first transaction, because, assuming that there was a transaction earlier than 24th Har which proved abortive, Document 4 which is relied on as establishing it, does not refer to its terms, for the whole point about the earlier transaction consists in Ahmed Shora having demanded a truck as part of the consideration. If this is not established, the fact of there having been an earlier transaction which admittedly failed to go through, would not help the Government. As the endorsement in Document 4 throws no light on the terms of the first transaction — assuming that it took place—this part of the case must be held not proved.

2.20 Besides, I entertain grave doubts as to the truth of the story as to the first transaction, though it is unnecessary to definitely find on it, in view of what I have stated earlier. This doubt arises owing to two circumstances: (1) It is stated that the first deed which is said to have been torn to pieces by the respondent was engrossed on stamp paper. The stamp paper is stated to have been purchased by Ahmed Shora from Radha Krishan Kaul, stamp vendor, on 23rd Har 2007 — the same person who, by the way, sold Ahmed Shora the Non-Judicial stamps for the sale deeds executed on 24th Har. The Register of this Stamp Vendor has been filed (Document No. 3) and while it shows sale of stamps to Ahmed Shora on the 24th for the two deeds of sale each for Rs. 5,000/-, does not record any sale of stamps to Shora on the 23rd. In the affidavit that he filed, he has sought to explain the absence of any entry regarding the sale of stamps for the first transaction by saying that in the hurry, he forgot to make the entry when he sold the stamps on the earlier date. I do not find it easy to accept this explanation. How he was able to tally his accounts with some sales omitted, one finds hard to conceive. (2) Again, it is somewhat unusual that the signature of an intended executant was taken in the documentation register before he had executed the document that was to be copied into it. Much stronger evidence than has been placed before me would be needed to establish that this irregularity — for undoubtedly it was an irregularity — did take place in the circumstances narrated. I do not think it necessary or useful to dwell any further on this aspect of the case and I can wind up this part of the case by stating that the existence of a contemplated sale on 23rd Har 2007 is not established beyond doubt, nor of course by any means its terms.

2.21 The first abortive transaction of the 23rd Har being out of the way, the questions arising out of the sale which actually took place on the 24th Har are: (1) Was this sale for Rs. 10,000/- at an under value? (2) Has it been proved that the vendor was paid only Rs. 2,000/- out of the sale price?

2.22 The first question need not detain me long. Ahmed Shora had in his affidavit stated—speaking of the transaction of the 23rd Har—that he stipulated for a truck worth, according

to him, Rs. 8,000/- in addition to Rs. 150/- per kanal for land in excess of 4 kanals which meant, as already stated, about Rs. 9,500/-. Again, while referring to the sale deeds of the 24th Har, he does not complain of Rs. 10,000/- the price set out in it, as an undervalue—his complaint being that he was paid only Rs. 2,000/- and that the balance of Rs. 8,000/- was not paid to him. Thus, apart from there being no evidence of the property being worth more than Rs. 10,000/-, we have the fact that the price was fixed with the free consent of the vendor.

2.23 In support of the case that Shora was paid only Rs. 2,000/- (out of Rs. 10,000/-) there is nothing except the affidavit of Ahmed Shora, and an officer of Government Mr. J. N. Kachru who claims to have been employed by the respondent, to negotiate the sale. That the latter might have been present at the transaction is proved by his attesting the sale deeds (Documents 5 and 6). The documentary evidence such as it exists is however positively in favour of the full amount of Rs. 10,000/- having been paid. In the first place the recital in each of the deeds is that the vendor had been paid Rs. 4,750/- by the vendee reserving Rs. 250/- to be paid before the Sub-Registrar. As the vendor has executed these deeds, he has acknowledged the recitals as true. There would thus be a presumption against him and he can rebut its truth only by the strongest proof. Besides, it is conceded that at the time of the registration, the vendor received the Rs. 250/- under each document and there is an endorsement of the Sub Registrar to this effect. The endorsement of the Sub-Registrar on each deed further records: "The Vendor has acknowledged the execution and completion of the sale deed and has admitted the contents thereof word for word as correct and true. He has also acknowledged to have already received personally a sum of Rs. 4,750/- out of the consideration of Rs. 5,000/-. The remaining consideration of Rs. 250/- has been paid by the vendee to the vendor at the time of registration in my presence". In the face of this solemn record of a public officer, it is idle to contend that the full amount of Rs. 10,000/- has not been paid to the vendor. If confirmation were needed, we have the affidavit of the petition writer V. N. Kichlu who drafted the deeds who says: "After the execution of the documents Bakshi Abdul Majid gave some money to the vendor Ahmedjoo Shora which had not been counted by me, but in the document I had written Rs. 4,750/- having been paid in each case to the vendor which he had in the presence of the Zaildar Sallar Ghulam Mohammad Mir and Bakshi Abdul Majid acknowledged to have received". I have no hesitation in holding that the non-payment of the consideration has not been proved.

2.24 In view of my above conclusions, the third question regarding the part attributed to the respondent does not arise for consideration at all. I hold that the charge contained in Allegation 4 is not made out, which would mean that the acquisition of this property was legitimate.

3.1 It would be seen that the sale deed from Ahmed Shora was taken in the names of two of the brothers of the respondent Bakshi Ghulam Nabi and Bakshi Abdul Majid as well as in the name of his minor son, Bashir Ahmed, but the later documents, which would be considered in connection with Allegation 5, appear to indicate that the purchase was either intended for the benefit of Bashir Ahmed who got the entirety of the consideration when the property with the house constructed upon it was ultimately sold in 1960, or that as part of the adjustments or understandings arrived at between the members of the family at the end of 1960 when the family businesses were dissolved, it was decided that Bashir Ahmed should have the benefit of the entire sale proceeds.

3.2 The Income-tax returns of the Feroze & Co. for the accounting year 1950 also disclose considerable income. Abdul Majid returned as manager of the firm an income of Rs. 19,81/4/-, but the income-tax officer assessed the income at Rs. 24,000/- after examination of the accounts. Here again it is needless to add that the firm was under-assessed by reason of deliberate non-disclosure of its income to which I have already referred.

3.3 In or about November 1950 Abdul Majid purchased two cinema theatres each a two-storeyed building known as Regal Talkies and Amrish Talkies together with considerable other buildings and land for a sum of Rs. 1½ lakhs (vide Document 172 dated 1st December, 1950 in Allegation 1). This was followed a few months later by the purchase in his name of a neighbouring property consisting of land and buildings for a sum of Rs. 50,000/- (vide Document 174 dated 20th July, 1951 in Allegation 1). These purchases seem to have been made by Abdul Majid for his own benefit. Evidently they were purchased out of his share of the income disclosed or undisclosed in Feroze and Co. Immediately they were purchased, they were run as theatres, but notwithstanding this, the property is found to have been assessed for income-tax under the head "property" and not as a business as a result of which Abdul Majid obtained considerable advantage.

3.4 One of the charges made against respondent is that in order to ensure a practical monopoly of custom for these two theatres he abused his official position and saw to it that no other theatre was licensed in the city of Srinagar. This is the subject of the charge in Allegation 21, but as the main portion of that allegation relates to a period much later than the purchase and is nearer 1959 and later, I consider it would be convenient to deal with it when I reach that date.

3.5 The year 1951 saw some further changes in the composition of Feroze & Co. On 1st April, 1951 Bakshi Ghulam Ahmed, a maternal cousin of the respondent and a brother of Abdul Rashid was taken into the firm as a partner

and along with him was admitted to the benefits of the partnership Bakshi Bashir Ahmed, minor son of the respondent then aged about 17 years having been born on 24-4-1934 who is described at this date in several documents as "the adopted son" of Abdul Majid. Their entry is evidenced by a registered deed of partnership which has been marked as Document 14 in Allegation 1. After reciting that Abdul Majid, Mohammed Yusuf, Bashir Ahmed and Ghulam Ahmed had agreed to become partners (Bashir Ahmed not being shown as a minor in this deed) it stated that Abdul Majid was to be the executive of the said firm who was authorised to take whatever action was needed in respect of the business of the firm. Each of these partners was entitled equally to the profit and loss (i. e. 25% each) but Abdul Majid was entitled, in addition to his share of profits, to a salary of Rs. 200/- per month besides travelling and other expenses. From the recitals in this document about this being the first partnership deed executed, it looks as if Feroze & Co. had not been constituted by any formal deed up to that date.

3.6 During the year 1951 also the firm appears to have done well and though the income returned by Abdul Majid on behalf of the firm was Rs. 12,094/1/3, the income actually assessed by the Income-Tax Officer was Rs. 27,698/-, i. e. nearly Rs. 4,000/- over the previous year's figure. Here again it is needless to point out that even this assessment discarding the return was a case of an under-assessment because of non-disclosure.

3.7 Into the partnership thus constituted were included on 12th December, 1952 six other members of the family belonging to different groups—Ghulam Nabi and two more of his sons Ghulam Hassan and Mohammad Shaffi; Abdul Rashid; Ghulam Mustaffa the husband of the respondent's sister Begum Aisha and Miss Shamim the minor daughter of the respondent.

3.8 I am making a reference to these details because it has been stated in some of the replies filed by the respondent as well as by his brothers, that being Muslims, there was nothing like a "family" relationship between them and that the case of the Government as regards "family concern" or "family business" was an attempt to introduce concepts and matters which had no foundation in fact. It would be seen that from 1952 onwards the firm consisted of ten partners—Roamer having gone out as early as February 1949—and the partners represented several distinct groups in the family—Bashir Ahmed and his sister representing the respondent's direct line, Ghulam Nabi and his three sons, Abdul Majid himself besides two maternal cousins and a brother-in-law. It is also interesting to note that the address of all these several partners as entered in the Register of Firms (Document 7 in Allegation 18) is Miskeen Bagh, Srinagar which was the residence of Bakshi Abdul Majid who was the managing partner of this firm.

3.9 In the accounting year 1952 an attempt appears to have been made by Abdul Majid to further conceal his income by returning only a figure of Rs. 5,275/- as income, but the income-tax officer on examination of the accounts assessed him on an income of Rs. 25,078. All this shows that the military contract business of Feroze & Co. was extremely lucrative and greatly augmented the financial resources and assets of the family.

3.10 Pausing here, it would not be out of place to mention that there are several affidavits filed from different persons in support of the charge in Allegation 18 in the course of which they have said that they had made supplies of considerable value to Abdul Majid to enable him to fulfil his contracts to the military authorities but that he failed and even refused to pay them for their supplies and this by taking advantage of his relationship with the respondent as his brother. I should add that there are allegations of this type by some who have filed affidavits which have been included among those in support of Allegation 1, besides in affidavits of some more who filed them in response to the notice to general public issued under Rule 6(1)(b). I have not referred to these in dealing with Allegation 18 or to their details because apart from their not being substantiated by oral examination of the deponents they do not form any part of the allegations which alone I have to take into account in arriving at my findings. I must say in fairness to the learned counsel for the Government that he refrained from making any detailed reference to the facts stated in these affidavits at any stage. My purpose, however, in mentioning them here is merely to indicate that the very large profits derived by Feroze & Co. in its business of military contracts might possibly have been due to the failure on the part of Abdul Majid to pay his suppliers the amounts due to them for his purchases. Otherwise there would be no explanation for the enormous amounts of undisclosed income of the several members of the family including Abdul Majid which were not brought into the books of Feroze & Co. but which were disclosed to the Income-Tax authorities under the voluntary disclosure scheme of 1955.

3.11 In connection with the assessment of Abdul Majid as partner of Feroze & Co for the Accounting year 2009 in regard to which he had, as stated earlier, returned an income of Rs. 5,200/- odd, he was examined by the Income-Tax Officer on 22-11-1952 who disallowed most of the losses claimed by him and assessed him on an income of about Rs. 25,000/- and as will be seen from the voluntary disclosures to which I shall be making a reference later, these were gross under-assessments. In the statement on oath recorded by the Income-Tax Officer (Document 19 in Allegation 1) Abdul Majid declared that he had been working as a military contractor for the last five years, that he worked in his individual capacity from January to the end of March 1951 under the name of Feroze & Co. and that then he had taken Mohammed Yusuf, Ghulam Ahmed and Bashir Ahmed

as partners with him each with an equal share *because his financial position did not permit him to work single-handed*. He added that Bashir Ahmed was his adopted son. He asserted that the accounts of the firm were complete and that the money for the purchase of the property in Residency Road—Amrish and Regal cinemas etc—was taken out of the working capital of Feroze & Co. as well as from borrowings from friends and relations and that he had paid back these monies during the year 1951. He stated that he had received a sum of Rs 28,000/- odd as rent from the cinema property purchased by him and as stated earlier it was on the basis of these building as being "property" and not as "business" that he was assessed (vide Document 18 in Allegation 1).

3.12 I will close this account of the state of the family at the end of 1953 by referring to the balance sheet of Feroze & Co. as on 31st December, 1953 (Document 17 in Allegation 1) which is made up after bringing into account the previously unaccounted monies which were declared by the several members of the family in pursuance of the voluntary disclosure scheme. The capital of Feroze and Co. is shown as Rs. 12,00,000/- and the profit for the year at Rs. 78,670/-. On the assets side are shown Rs 48,470/- as a loan outstanding with Abdul Majid and a further sum of Rs 12,000/- with Bashir Ahmed. Besides a sum of Rs 4,66,000/- is shown as an "Imprest" with Abdul Majid. The capital of Rs 12 lakhs is shown to have been contributed by ten members of the family of whom Abdul Majid's contribution was Rs. 6 lakhs. Bashir Ahmed then aged 19 is credited with Rs. 2,00,000/- and his minor sister Shamim with Rs. 75,000/-. Mohammed Yusuf son of Ghulam Nabi is credited with Rs 50,000/-, Ghulam Ahmed a maternal cousin with Rs. 50,000/-, Ghulam Nabi with Rs. 1 lakh, Mirza Mustaffa, brother-in-law with Rs. 25,000/. Mohammed Shafi son of Ghulam Nabi with Rs 25,000/-, Ghulam Hasan son of Ghulam Nabi with Rs. 25,000/-, Abdul Rashid with Rs. 50,000/-.

3.13 These figures would show that the family had come to be in fairly affluent circumstances within about five years of the respondent becoming the Deputy Prime Minister. I have only to add that the main business of the family still continued to be in military contracts which they had been carrying on ever since the beginning of 1948.

3.14 We now pass on to the year 1954. From the end of 1953 onwards Abdul Majid and Ghulam Nabi appear to have been on the look out for the purchase of a suitable residential accommodation for the family. It might be pointed out that upto this period, while the respondent himself was residing in Government accommodation provided for the Deputy Prime Minister, Abdul Majid had obtained on lease an evacuee property in Miskeen Bagh and if one went by the addresses given for all the members of the family in the Register of Firms (Document 7 in

Allegation 18) relating to the entries regarding the composition of Feroze & Co., all the others appear to have resided with him. The property which ultimately they decided to purchase was a certain building with an extensive compound in Sonawar, Srinagar which went by the name of 'River View' or 'Chatterji House'. Though the agreement for the purchase of this property was concluded in March-April, 1954, owing to legal complications to which reference will be made later, the sale deed was actually executed only on the 11th February, 1955. The propriety of the acquisition of this property is challenged by the Government and is the subject-matter of Allegation 7. I consider it would be convenient to deal with the charge in relation to the acquisition of this item before proceeding further with the history of the family.

3.15 As notified this allegation reads:—

'Shrimati S. K. Chatterjee, wife of Shri J. C. Chatterjee, owned a 3 storeyed building on a plot of land measuring 24,151 Sq. Yds. held on lease in Sonawar, Srinagar. On her death, her daughter, Shrimati Shyama Rani Mukerjee, having not succeeded in her attempts for the renewal of the lease, was eventually forced to apply in the year 1954, through an attorney, to transfer the lease of the property to Bakhshi Ghulam Nabi brother of Bakhshi Ghulam Mohammad. The sale deed was effected on 29th Magh, 2011 (1954 A. D.) with respect to the said property for a nominal consideration of Rs 5,000.

This sale of land was secured by exploitation of the position of Bakhshi Ghulam Mohammad as Prime Minister and with his connivance".

3.16 The facts necessary to be narrated to appreciate the charge contained in this allegation are the following and among them I shall first set out matters which are not in controversy:

3.17 An extent of over 40 kanals of land in Sonawar, Srinagar, on the bank of the river Jhelum was granted in September, 1912 on lease by the then Ruler of the State to one Mr. J. C. Chatterji who was at the time in the State service as Director of Archaeology. The lease was later transferred to the name of his wife Mrs. Chatterji in 1918. Mr. Chatterji had constructed a residential house on this land which he named "River View." The lease was for a term of 40 years and was thus to expire in September 1952. Long prior to the termination of the lease, Mrs. Chatterji then a widow addressed in 1949 an appeal to the respondent to have the lease renewed for a further period of 50 years and filed along with it an application in 1949 to the Revenue Secretary of the State for the said relief. She received no reply and so she repeated

her application in May 1950, but this time to the Cantonment Authority, as the land was in a Cantonment area (Document 2). This was being processed in the office of the Cantonment Authority but no acknowledgement or reply was sent to her. Possibly because of this, she deputed Mr. Mukerji, her son-in-law to go to Srinagar personally to straighten out matters. Mr. Mukerji came to Srinagar and met Col. Kak, the Chairman of the Cantonment Authority in June 1950 and returned apparently satisfied that he would succeed as seen from his letters (vide Document 5 dated 8th June, 1950 and also Document 6 dated 19th June, 1950). After he reached Calcutta, his mother-in-law (Mrs. Chatterji) wrote to the Cantonment Authority (i. e. Col. Kak thanking him for agreeing to extend the lease and referring to certain other matters in connection with the property not relevant to the present story. She, however, received no formal reply agreeing to the extension, though she had complied with a demand made on her for payment of certain arrears of ground rent and other charges. It must be mentioned that about this time, the house was in the occupation of military authorities under a lease from her on a rent of Rs. 350/- per month.

3.18 The processing and enquiries in the office of the Cantonment Authority came to an end and the proposal of the officers of the department for granting a renewal of the lease of the land for a further period of 20 years was approved by the Cantonment Board on 13th June, 1951 (Document 10). Apparently because this decision was not confirmed by the Headquarters of the Cantonment Area, it was not immediately communicated to the lady, who by her letter dated 13th August, 1951 (Document 11) made enquiries as to the result of her application. She, however, got no reply. Then her son-in-law Mr. Mukerji wrote to Col. Kak a letter on 23rd November, 1951 (Document 12) requesting for information as to whether the renewal had been ordered and making a piteous appeal for early favourable orders in view of the old age and other circumstances of the lessee. This letter was not replied to either and we have no indication as to the reason for this silence. This stage of the story which is concerned with the attempt to get the lease renewed ended with the intimation to the lessee and the son-in-law of the fact that the lease of the land had been ordered to be renewed for a period of 20 years from 1952. This was on 16th January, 1953 (vide Document 13).

3.19 By the date of this intimation, however, Mrs. Chatterji had died which event took place in August, 1952, leaving an only daughter Mrs. Mukerji, who obtained a succession certificate to the estate of her deceased mother. In consequence Mr. Mukerji, while acknowledging the letter (Document 13) forwarded the succession certificate (Document 15) and requested the Cantonment Authority to have the renewed lease made out in the name of his wife (vide Document 14 dated 27th January, 1953). The Cantonment Authority

bought the opinion of the Divisional Commissioner Srinagar as to whether this transfer of the lease-hold interest by succession could be recognised. The office of the Cantonment Authority was meanwhile directed to prepare and submit a Shajra and Khasra for the use of the Divisional Commissioner (Document 16 dated 9th October, 1953) and the mutation was made by the concerned clerk on 26th December, 1953 (Document 17). This fact, however, was not communicated to Mr. Mukerji and he was ignorant of the progress of his application for the recognition of his wife as the successor of his mother-in-law.

3.20 We next reach the stage round which the controversy in respect of this charge turns. In view of the absence of any information from the Contonment Authority regarding his application dated 27th January, 1953 (Document 14) which perhaps indicated to Mr. Mukerji the difficulties he would have to face if the property was obtained by him, and possibly also in view of his desire to dispose of a property which he living in Calcutta would have difficulty in managing and putting to profitable use, Mukerji appears to have expressed to Col. Kak his wish to sell away the property at the best price obtainable. In stating this I am ignoring what is stated in some of the affidavits, that it was Col. Kak who in order to oblige the respondent in acquiring the property, exaggerated to Mr. Mukerji the difficulties in obtaining the transfer of the lease in favour of his wife, and suggested the sale of the property, as being unsupported by any documentary evidence. It is at this stage, that it is stated in the affidavits, that the respondent evinced an interest in acquiring the property, and asked Col. Kak to arrange for its transfer to his brother Ghulam Nabi, but there is no documentary evidence in support of this suggestion which I therefore reject. What, however, we have on the record is a power of attorney executed by Mrs. Mukerji in favour of one Madhusudan Kak, a close relation of Col. Kak dated 9th July, 1953 (Document 43). The terms of this power are somewhat interesting. It is to execute a sale deed of "River View", register the same and complete the transaction of sale and to receive from the purchaser Rs. 19,000/- being the price agreed to be paid to "me" i. e. the principal for the purchase of the property. The name of the intended purchaser was not, however, specified and Mr. Mukerji in the affidavit he has filed states that he did not know it either, nor have we any evidence to indicate the identity of the contemplated purchaser, though from the definite figure of Rs. 19,000/- which the agent was directed to receive, it is obvious that there was a known purchaser with whom this price had been settled. The sale contemplated by this power of attorney did not, however, materialise for reasons regarding which again there is no evidence but the power of attorney was nevertheless not formally cancelled. What next we have is another power of attorney, more than eight months later, executed by Mrs. Mukerji in favour of Capt. J. N. Raina (Document 18 dated 17th March, 1954).

3.21 Captain Raina was also a relation of Col. Kak and he states in the evidence he gave before me that he was induced to accept the agency by Col. Kak who desired that he should act quickly to effect the sale as he was being pressed to do so by Mr. Mukerji. With Capt. Raina on the scene, things started moving and he apparently immediately concluded a sale to Bakshi Ghulam Nabi, brother of the respondent. In the evidence which he gave before me in circumstances to be set out later, Cap. Raina stated that he had been approached by Abdul Majid who offered to buy the property for Rs. 17,000/-. He says that he demanded Rs. 22,000/- but after negotiation, the price was fixed at Rs. 20,000/- and that the sale was to be taken in the name of Haji Ghulam Nabi. When these negotiations concluded Capt. Raina made an application to the Cantment Authority on 12th April, 1954 (Document 19) for the transfer of the leasehold interest to Ghulam Nabi as the purchaser from him under the power of attorney.

3.22 I shall next refer to certain correspondence between Capt. Raina and Mr. Mukerji, on which considerable adverse comment was made by learned counsel for the Government and this would show why I issued notice to Capt. Raina under Section 10 (1) of the Act.* In the first week of May 1954 Capt. Raina wrote to Mr. Mukerji (Document 37) explaining what he had done after receiving the power of attorney. In his letter he said,

"I have been trying to dispose of the house as per your instructions and that of Col. Kak. At present the transfer or extension of lease has been stopped under the orders of Jammu and Kashmir Government. I have now applied on your behalf to the competent authority to permit me to sell the property on the land and also allow us the transfer of the lease. I hope to hear soon from them and when I do, I shall inform you accordingly. Meanwhile we cannot go any further with regard to that".

*10(1). if at any stage of the inquiry the Commission considers it necessary to inquire into the conduct of any person or is of opinion that the reputation of any person is likely to be prejudicially affected by the inquiry, the Commission shall give to that person a reasonable opportunity of being heard in the inquiry and producing evidence in his defence;

Provided that nothing in this sub-section shall apply when the credit of a witness is being impeached.

Mr. Mukerji replied to this on 13th May, 1954 (Document 38) by which he requested Capt. Raina to dispose of the property as early as possible and try to get at least Rs. 20,000.-. He added that if there was difficulty in selling, he would seek the assistance of Bakshi Ghulam Mohammed who, he claimed was well known to him. Document 39 dated 20th May, 1954 was Capt. Raina's reply in which he assured Mukerji that he was pursuing the sale transaction vigorously and that at that stage it was not necessary to approach Bakshi Ghulam Mohammed regarding which he would write later. I shall deal with the comment made by learned counsel for the Government on these letters, and particularly on the statements made by Capt. Raina in them in their proper place, but shall proceed to complete the narrative.

3.23 The application of Capt. Raina dated 12th April, 1954 (Document 19) was acceded to by the Cantonment Authority and they wrote to the Sadr-i-Riyasat for according sanction (a) to the renewal of the lease for 20 years in favour of Mrs. Chatterji, (b) to the recognition of the transfer to Mrs. Mukerji by reason of her succession to her deceased mother; and (c) to the transfer of the lease from Mrs. Mukerji to Haji Ghu'ain Nabi (vide Document 20 dated 22nd May, 1954) after pointing out that transfer of leasehold rights were permitted under the Jammu and Kashmir Nazool Land Rules 1905 under which the original lease was granted.

3.24 Meanwhile the Cantonment Act 1924 was extended to the State of Jammu and Kashmir by notification under that Act on 14th May, 1954, and under its provisions the approval of the Army Headquarters had to be obtained for effecting a renewal and transfer of lease. The proposal contained in Document 20 was accordingly placed before the Army Headquarters and the Col. in charge who dealt with it replied (vide Document 21 dated 23rd August 1954) asking why the lease should be renewed so as to give the benefit of the renewal to a stranger purchaser, and inquiring whether the Cantonment Authority could not use the land themselves. It was Col. Kak, the President of the Cantonment Authority who replied to it (vide Document 22 dated 5th September, 1954) and he pointed out that under the Nazul Rules the lessee was entitled to a renewal and that the right was transferable. Besides he stated that if the renewal or transfer was to be refused, they would have to acquire the buildings on payment of their market value and that the Cantonment Authority had not the large funds that would be needed for the purpose. On receipt of this reply, the Army Headquarters communicated on 1st October, 1954 the sanction of the Sadr-i-Riyasat to the renewal and transfer of the lease in favour of the purchaser Ghulam Nabi and had the same communicated to Capt. Raina as power-of-attorney agent of the original lessee as also to the purchaser Ghulam Nabi (vide Document 23). The Army authorities however, pointed out that under the rules made under the Cantonment Act, the

transfer etc. had to obtain the sanction also of the General Officer Commanding, Western Command, and after directing the Cantonment authorities to intimate to the parties not to proceed with the transaction of sale, and to make a reference of the case with all the relevant papers to that authority, a formal communication was issued to the parties not to proceed further pending his orders (Documents 25 and 26). This reference was made on 5th December, 1954 (Document 28) by Col. Kak as president of the Cantonment Authority and after prolonged correspondence which related to matters not relevant to the present context, was finally sanctioned on 31st December 1957.

3.25 Meanwhile, Cap. Raina, though he had been directed by Document 26 (dated 19th October, 1954) not to proceed further in the matter of the sale pending final orders, completed the sale and executed a deed conveying the property to Bakshi Ghulam Nabi on 11th February, 1955. As under the Cantonment Act and Rules, the Cantonment Executive Officer had to be notified of any transfer, the same was done *expost-facto* in February 1956 and it was after this, that the transfer in favour of the purchaser Ghulam Nabi was sanctioned. This sale was only of the lease hold interest and was for Rs. 5000/- the superstructure being conveyed separately for Rs. 15,000/-. Immediately after the sale, Capt. Raina wrote (Document 40) to Mr. Mukerji on 15th February, 1955 informing him of the completion of the sale for Rs. 20,000/- without mentioning the identity of the purchaser, adding that "a great headache was off" and followed it up by another letter dated 17th February, 1955 (Document 41) enclosing a bank draft for Rs. 18,500 and promising to send the balance after paying off certain dues. The balance due was thereafter remitted and nothing further was heard of this transaction and no complaint was made by Mr. Mukerji regarding the fairness of this sale until he made statements during the investigation which preceded this Commission and filed an affidavit in support of the Government in this inquiry.

3.26. I shall now proceed to consider the charge made against the respondent in respect of this transaction of purchase. Though the sale deed was taken in the name of Ghulam Nabi, it is clear that it was really on behalf of the entire family group. In the first place there is the evidence on oath of Capt. Raina who was examined before me that the party that approached him for the purchase which ultimately resulted in the deed (Document 36 dated 11th February, 1955) was Abdul Majid.

3.27. Next we have two registered deeds—one dated 26th December, 1960 (Document 56 Allegation 1) and the other dated 14th May, 1961 (Document 31 in Allegation 8) to which detailed reference will be made later, by which this property was divided among the several members of the family. The suggestion of the Government, therefore, that this property was purchased to serve as sites for the construction of residence for

the members of the family appears to be correct. From this it would follow that it is not improbable—but on the other hand very probable—that the respondent himself was interested in acquiring this property.

3.28 Of course, there was nothing wrong in the respondent acquiring property, or this property in particular but the gravamen of the charge is that he prevailed upon or influenced Col. Kak to manipulate the proceedings of the Cantonment Authority as to make it appear that there were insuperable obstacles in the way of Mr. Mukerji obtaining a transfer of the lease in favour of his wife so much so that Mr. Mukerji was induced to part with the property which was worth over Rs. 40,000/- for Rs. 20,000/-.

3.29 No doubt there are affidavits filed, vide for example that of Mr. R. N. Warikoo, then P. A. to the respondent, in which it is stated that accompanied by Col. Kak the respondent inspected that property in 1953 and he desired Col. Kak to arrange for this transfer in the name of his brother, and that the latter assured him of his services to that end. But this, however, is not borne out by any documentary evidence

3.30 The first stage of the story is concerned with the efforts of Mrs. Chatterji to obtain a renewal of the lease. That had, however, been decided in her favour by the Cantonment Authority on 13th June, 1951 (Document 10) though the communication in regard to it was by Document 13 dated 16th January, 1953 after Mrs. Chatterji's death. As the entry on the scene of the respondent is stated to be later, we might ignore the first stage, though in fairness to Col. Kak it must be said that even as early as June 1950 he seems to have assured Mr. Mukerji that the lease would be renewed (vide Document 6). Mr. Khambata agreed that he had nothing to say against Col. Kak or the respondent in so far as this stage was concerned.

3.31 It is at the second stage when on the death of Mrs. Chatterji in August 1952, the succession to her of Mrs. Mukerji was sought to be recognised, that it is said that the respondent evinced interest in purchasing the property. When I desired Mr. Khambata to specify the improprieties which he attributed to Col. Kak at this stage his answer was this: (1) Mr. Mukerji had applied for the recognition of his wife's succession by Document 14 on 27th January 1953 and this had been processed by the office of the Cantonment Authority and on 26th December, 1953 (Document 17) even the mutation had been carried out. This fact was kept back from Mr. Mukerji who was, therefore, led to believe that there were difficulties in the way of his obtaining this transfer and this induced him to consider that the sale of the property was the only way in which he could solve this trouble. But this submission ignores two matters. In the first place, it is

common ground that the processing for effecting the mutation was being carried out only in October, 1953 (Document 16), and was completed on 26th December, 1953 (Document 17). But long before this was done Mr. Mukerji had in July 1953 executed a power of attorney in favour of Mr. Madhusudan Kak to effect a sale of the property for a price of Rs. 19,000/- (vide Document 42). It was not suggested that Col. Kak did or omitted to do anything as the President of the Cantonment Authority before the date of the power of attorney.

3.32 In this connection my attention was drawn to a statement in the affidavit of one Mohammad Zaman Khan, clerk in the Cantonment Board at the relevant time, that he brought to the notice of Col. Kak in December 1953, the fact that mutation had been effected in favour of Mrs. Mukerji and that Col. Kak told him to keep the papers pending, as the property was being purchased by the respondent. There is nothing in the documents to support this assertion and I am not, therefore, prepared to accept it as proved. But that apart, we have the circumstance already pointed out, of the power of attorney in favour of Madhusudan Kak in July 1953, and having regard to his relationship to Mr. Madhusudan and of the circumstance that the power was executed at his instance, he must have been aware of the sale which for all practical purposes had been fixed up for Rs. 19,000/-. It was not suggested that the sale was in favour of the respondent or his nominee. It, therefore, appears to be improbable that Col. Kak would have told Zaman, the matters he is stated to have said, in the affidavit already referred to.

3.33 Again, apart from the affidavit of Zaman there is nothing on record on which I could hold that Col. Kak was aware of the mutation having been made in the office on the date it was done. It was, however, suggested that in the normal course it should have been brought to his notice, particularly having regard to his meeting Mr. Mukerji and the correspondence he had with him and the interest he was taking in this affair. I, however, consider that before imputing such grave misconduct to him there should be more than a mere balance of probability. Of course, as one who had promised to help Mr. Mukerji and in whom he professed interest, one could expect more active assistance by gathering important and relevant information and communicating the same to him, particularly as Mr. Mukerji had confided in his relation Madhusudan Kak, by executing a power of attorney in his favour, but from his failure to bestow this much of care and attention, I am not prepared to draw the inference that his silence was due to any improper motive.

3.34 The other matter was said to consist in his suggesting to the General Headquarters that the Cantonment Authority was not in a position to acquire the property but that the transfer of the lease should go ahead with the lease

being renewed. In this connection reference was made to the statements in Mohammad Zaman's affidavit that the Cantonment Authority had at that time Rs. 80,000/- and that Col. Kak pleaded paucity of funds because he desired to help the respondent in acquiring the property for a throw-away price. I cannot obviously accept the mere statement of Zaman as to the amount of funds which the Cantonment Authority had at the time, in the absence of reliable and authentic evidence which certainly would have been available. Besides the other requirements of the Authority to be met from the funds in its hands—whatever be the amount—would also have to be taken into account, matters on which we have nothing on record and in the absence of incontestable proof to the contrary, I cannot hold that the statement of Col. Kak which could have been verified, if incorrect, by the G.H.Q., was deliberately false and was designed to mislead the higher authorities.

3.35 In fact, I stated to Mr. Khambata that in the event of my finding some prima facie case being made out as regards the improper conduct on the part of Col. Kak, I would have to issue notice to him and offer him an opportunity of being heard, before I could record findings against him. I desisted from doing so, because I was convinced that the suggestion of improper conduct was not even prima facie brought home to him.

3.36 The conduct of Capt. Raina was the subject of the next comment. He came on the scene in March 1954, when at the instance of Col. Kak a power of attorney was executed in his favour. His immediate act was to conclude the sale in favour of Ghulam Nabi and though he had made an application to the Cantonment Authority for the transfer of the leasehold interest in favour of the vendee (Document 19 dated 12th April, 1954) in the letter that he wrote to Mr. Mukerji in the first week of May 1954 (Document 37) he said that he was "trying" to dispose of the house though this had been finalised besides that the transfer or extension of the lease had been stopped under orders of the Jammu & Kashmir Government (which was untrue) and that he was consequently applying on his behalf for permission to sell the property. Next, he never communicated to Mr. Mukerji the identity of the purchaser. Lastly it was said that he had the sale effected for the low price of Rs. 20,000/- when the property was worth at least double that sum. In view of my considering, particularly

the contents of Document 37, that there was a prima facie case of improper conduct on Capt. Raina's part in discharging his duties as an agent under the power of attorney, I directed notice to issue to him under Section 10 (1) of the Act affording him an opportunity to offer his explanation in respect of these several matters. In response to this notice Capt. Raina appeared and after making an oral statement detailing his case, offered to be and was examined on oath.

3.37 In explanation of the statements in Document 37 he stated in answer to my question that he was told by someone in the office of the Cantonment Authority whom he was unable to identify that there would be some difficulty in effecting the transfer. He did not make enquiries of or consult Col. Kak about this but thought the information correct. He was told to file an application for permission to transfer by sale and he did so, and as the sale could not be finalised until orders were passed on his application, he considered the negotiated sale to be incomplete and used the phrase "trying" to sell. He knew that the lease had been directed to be renewed, but the difficulty was said to be over the recognition of the succession. As regards the reason why he did not want Mr. Mukerji to invoke the assistance of Bakshi Ghulam Mohammad, the suggestion on behalf of Government being that it was done in order not to let Mr. Mukerji know that the respondent was himself interested in the purchase, his reply was that as the matter was being pursued with the Army authorities, the respondent's assistance might not be of much use. As to why he did not inform Mukerji as to who the purchaser was, he said, he thought he was not interested, as what mattered to him was only the price, and besides Mr. Mukerji never asked him for the information. I accept this last one, as even at the time of the previous sale for Rs. 19,000/- to complete which he executed the Power of attorney in favour of Mr. Madhusudan Kak, Mr. Mukerji admits he did not know who the purchaser was. Some of the other explanations are no doubt not very satisfactory, but I am not prepared to reject them, particularly as there was no suggestion in the cross-examination of the witness by learned counsel for the Government, that Capt Raina was induced to act in this manner owing to any friendship with or at the instance of the purchaser or of the respondent.

3.38 Lastly, as regards the low price, he stated that the house was in a dilapidated condition, the plaster falling, doors and windows broken, walls sinking and the floor damp and broken up. He said that Mr. Mukerji had in September 1953 made desperate efforts to sell the property but without success. Hindus were not greatly interested in the purchase of property owing to the political situation at the end of 1953 when after displacing Sheikh Mohammed Abdulla, the respondent took over as Prime Minister and after such efforts as he could make, he got a price of Rs. 20,000/-. He added that he got no remuneration as it was a labour of love, to oblige Col. Kak who because of the importunities of Mr. Mukerji desired him to effect the sale as expeditiously as possible.

3.39 On the question of the real value of the property the only reliable evidence is that afforded by the circumstance that the building was fetching a rent of Rs. 350/- per month from October 1948 to September 1950, and Rs. 300/- per month from 1st November, 1953 to 31st March, 1954. The rental may be a factor in computing the market value of the building, but not with positive certainty, for the value depends on the actual condition of the house. If the physical condition of the house was as depicted by Capt. Raina, and there was no effective cross-examination of him on this point, and there was no acceptable evidence in contradiction either, the price fetched cannot be said to be so unreasonably low as to lead to an inference of improper conduct on the part of the agent who effected the sale and this particularly because, the site was a leasehold for a 20-year term. The value of the site in 1963 is quite a different matter and this I have referred to in dealing with question (1).

3.40 If the action of these persons does not lead to the inference of misconduct on the part of either Col. Kak or Capt. Raina there does not appear to me to be any basis for holding that the respondent abused his official position so as to obtain a benefit for himself.

3.41 The gravamen of the charge as explained before me was that the respondent abused his position vis-a-vis Col. Kak and that the latter in turn got Capt. Raina to help the respondent. The respondent as Prime Minister was not in any position of authority over Col. Kak, and even if the story that he approached Col. Kak in 1953 and desired him to manage to secure the property for him be accepted, it would not be possible to hold that the respondent misconducted himself in his office by doing so. Besides, since I have held that neither Col. Kak nor Capt. Raina have been proved to have been guilty of improper conduct in relation to this transaction, I must find that the charge against the respondent contained in Allegation 7 is not made out.

4-1. The only matter that remains is to repeat what I have already briefly stated that this purchase of the Sonawar Louse appears to have been for the benefit of the family though the sale deed was taken in the name of Ghulam Nabi. First we have the statement on oath of Capt. Raina who deposed that the person who approached him first in connection with the purchase was Abdul Majid though ultimately the sale deed was taken in the name of Ghulam Nabi. But that apart, we have a registered deed of declaration dated 26th December, 1960 to which Ghulam Nabi, Bashir Ahmed, Shama Mir, Ghulam Ahmed and Mst. Aisha were parties in which they state that the buildings raised in several portions of the compound were the individual properties of the parties who had been in exclusive occupation of the same (vide Document 56 in Allegation 1). This was followed by an agreement of partition (Document 31 in Allegation 3) dated 14th May, 1961 which was registered on 16th May, 1961, wherein Ghulam Nabi described as party No. 1, Bashir Ahmed and Shama Mir described as party No. 2 then described as residing with the respondent in the Prime Minister's official residence at Hotel Road, Ghulam Ahmed maternal cousin of the respondent referred to as party No. 3 and Aisha Begum sister of the respondent referred to as party No. 4, state that each of these parties had constructed a two-storeyed house and had been in exclusive possession and enjoyment of the houses constructed by them and that in order to avoid future disputes they had put up fences to indicate the area occupied by each. It might be mentioned that Bashir Ahmed and his sister obtained nearly one-half of the extent of the site. These therefore furnish evidence of the parties having acted as if they constituted a family though in legal theory there was no question of any joint family relationship between them.

4-2. This would be the convenient stage at which to make a reference to the voluntary disclosures of their unaccounted monies made by several members of the family the total of which comes to the very respectable figure of about Rs. 21 lakhs. The Government of India had notified in December 1955 that no inquiry would be made into the capital assets of bona fide assessee of the State as on the 1st day of the previous year 1954-55, which in the case of this family would mean on the last day of 1953, if they intimated to the concerned Income Tax Officer before the 29th February, 1956 about the undisclosed monies which they had not brought into their accounts. Taking advantage of this concession offered, the several members of the family made voluntary disclosures in terms of the above press communique on or about the 28th February, 1956. In his letter to the Income-Tax Officer Abdul Majid stated (Document 21 in Allegation 1) that he had brought into the books of Feroze & Co. in the balance-sheet for the year ending December 1953 certain hitherto undisclosed items of assets. He stated that he had on the 1st January, 1953 by way of share capital in Feroze & Co. Rs. 6 lakhs besides owning the Amrish and Regal cinemas with their equipment in co-ownership with his wife for which Rs. 2,78,000 had been paid, had purchased building on the Residency Road and Lambert Lane (these latter were purchases made in 1951) for Rs. 1,40,000. Besides, he stated that during 1954-55 he had constructed a residential house at Pahalgam for Rs. 70,000, a flat at Bombay with fittings and furniture for Rs. 75,000 and purchased 600 shares in the Imperial Tobacco Co. of the face value of Rs. 6,300 together with bank balances totalling Rs. 20,800. Besides this, he said

that he had received Rs. 35,000 a year by way of investments on these monies and that the cash balance which he had on 31st December, 1955 in the "home chest" amounted to Rs. 2,65,000 which he stated was the property of his wife. The total amount thus disclosed by Abdul Majid came to Rs. 14,55,100. He however claimed that he owed the firm of Feroze & Co. about Rs. 7 lakhs.

4-3. Ghulam Nabi's disclosure statement which he filed as partner of Feroze & Co. is Document 22. In it he stated that as on the 1st January, 1953 he had a capital investment of Rs. 1 lakh with Feroze & Co. and that the investment with the firm of Haji Ghulam Nabi Noor-ud-Din was Rs. 1,85,000. Besides, he admitted that he had in his home chest Rs. 1,50,000. In regard to the firm of Messrs Ghulam Nabi Haji Noor-ud-Din it must be pointed out that it does not seem to have existed before 1955 as I shall have occasion to point out a little later. The total, therefore, of the undisclosed assets of Ghulam Nabi came to Rs. 4,35,000.

4-4. Bakhshi Bashir Ahmed also filed a statement as partner of Feroze & Co. (Document 23) in which he stated that his credit balance in the capital account of Feroze & Co. on the 1st January, 1953 was Rs. 2 lakhs and that his share of profits to the end of that year was Rs. 7,867, i.e. one-tenth of the total profit for the year. His sister Shamim also filed a declaration (Document 24) as partner of Feroze & Co. and disclosed a credit in the capital account of Feroze & Co. of Rs. 75,000 with Rs. 7,867 as her share of the profits for the year.

4-5. The statement of Ghulam Hassan son of Ghulam Nabi is Document 25 in Allegation 1, and he declared that Rs. 25,000 was standing to his credit as the capital investment in Feroze & Co. He added that he had cash to the extent of Rs. 8,000 which was in his mother's custody.

4-6. Mohammad Shafi also a son of Ghulam Nabi disclosed same amount in his statement (Document 26) with Rs. 8,000 in the hands of his mother.

4-7. Mohammad Yusuf, another son of Ghulam Nabi discovered Rs. 50,000 as his capital investment in Feroze & Co. with Rs. 12,000 stated to be in the custody of his mother (Document 27).

4-8. Bakhshi Ali Mohammad a brother of the respondent in his disclosure statement (Document 28) said that he started a partnership business in September 1955 with a stranger and that he had invested Rs. 18,000 in that business. He added that besides this sum he had capital investments to the extent of Rs. 77,000 which had not been brought into account.

4-9. Bakhshi Ghulam Hussain paternal cousin of the respondent stated in Document 29 (his disclosure statement) that he had invested Rs. 1 lakh in certain forest leases which he had taken up.

4-10. Another brother of the respondent Haji Abdul Hamid stated in Document 30 that he had cash to the extent of Rs. 58,000 apart

from Rs. 50,000 which his wife had, making a total of Rs. 1,08,000. His wife Sitara Begum filed a similar statement corroborating what the husband said (Document 31).

4-11. Ghulam Ahmed maternal cousin of the respondent who was a partner in Feroze & Co. disclosed that he had contributed Rs. 50,000 to the capital of the firm and was besides entitled to his one-tenth share of the profits for that year (Document 32).

4-12. The respondent's sister's husband Mirza Ghulam Mustafa disclosed in Document 33 an investment of Rs. 25,000 towards the share capital of Feroze & Co. of which he was a partner and that in addition he had cash to the extent of Rs. 1½ lakhs out of which he had invested Rs. 60,000 in Tasneem & Co.

4-13. We have now reached the year 1955 and it is seen that by this date all the members of the family put together possessed about Rs. 25 lakhs and the Government have not been able to establish that any portion of this sum was attributable to abuse of power on the part of the respondent. This Rs. 25 lakhs which is stated to be the total of the assets at the end of 1953 is seen to have multiplied into about Rs. 145 lakhs (one hundred and forty five lakhs rupees) in the course of next ten years by October 1963. It is not possible because of lack of material nor is it necessary to trace the progress of the wealth of the several members of the family from year to year from this point onwards. I consider it sufficient to refer hereafter merely to the starting of the several concerns which are the subject-matter of the charges included in the allegations and then determine in cases, where I hold the charge established my estimate of the financial advantage gained by the particular relation involved by reason of the abuse of power on the part of the respondent.

4-14. During 1955 Bakhshi Abdul Majid started the first independent business breaking new ground. This was a concern known as Kashmir Oil Co. at Srinagar for dealing in petroleum products of Burma Shell which appears to have commenced towards the end of 1954, because the bank account of the concern with the State Bank of India (Document 34 in Allegation 1) starts with a cash deposit of Rs. 1,000 on 2nd December, 1954. He was having a petrol pump on the curb of the Residency Road just opposite the property which he had purchased in 1951. The business evidently must have been fairly lucrative as shown by the credits in the bank account but we do not have sufficient material to assess its profitability. I shall have occasion to deal in greater detail with regard to this business of Kashmir Oil Co. when I deal with the circumstance in which this pump was shifted to a site in Bonamsar in Srinagar. This forms the subject-matter of Allegation 11 and will be dealt with in that context.

4-15. The years 1955 to 1957 seem to have been a period of vast expansion in the area of operation of the several members of the family. While Abdul Majid showed great interest in the automobile business, possibly with a view to provide an opening for his nephew Bashir Ahmed the son of the respondent, Ghulam Nabi specialised in undertaking

forest contracts. The first of the concerns—a branch of Feroze & Co.—was started on 12th August, 1955 under the name and style of Tasneem & Co. Srinagar and consisted of nine partners which comprehended the several branches of the family. The partners were Ghulam Ahmed maternal cousin of the respondent, Ghulam Nabi and his two sons Ghulam Hassan and Mohammad Yusuf, Bashir Ahmed and his sister Shama Mir, Abdul Rashid, Mirza Ghulam Mustafa and Abdul Majid. This firm which started its operation in July 1955 even before the formal deed was executed, entered into several contracts with the Forest Department but it is unnecessary to refer to the details of these because no contract obtained by Tasneem & Co. is the subject of any charge in the several allegations in the notification. Besides, Tasneem & Co. Ghulam Nabi started several concerns in his own name for dealing in forest contracts of which it is sufficient to refer at this stage to Haji Ghulam Nabi Ghulam Rasool which was started in 1956, Ghulam Nabi Haji Noor-ud-Din which commenced on 1st April, 1956 and Friends & Co. Srinagar which included some strangers which was started on 1st January, 1957. I am mentioning these merely to show the diversification in the business activities of the family during this period.

4-16. Bashir Ahmed had completed his school education by 1950-51 when he was 16 years old (he was born in April 1934) and he says that thereafter he proposed to his father that he would like to take automobile engineering as a career. He worked as an unpaid apprentice in the Jammu and Kashmir Government Workshop and thereafter in Bombay with the Roots group. After this training he was sent to England in 1952 for a three-year engineering course in the factory of Humber Limited at Coventry. The respondent states that he asked Abdul Majid to make suitable arrangements for a career for his son who had expressed his interest in automobile engineering. It is possible that this led Abdul Majid to seek an opening in the automobile business and fix up concerns even before the completion of Bashir Ahmed's training, so that there might be a proper place for him to take over when he was ready for the job. By way of venturing into the automobile business we have two concerns. The first was Kathua Motors, Jammu which was started on 15th August, 1955 with Mohammad Yusuf son of Ghulam Nabi and a stranger one Bakhshi Hardut as partners. So far as Yusuf was concerned, he represented the family and this business was treated as a branch of the family firm of Feroze & Co. Kathua Motors obtained the sole dealership for the sale of Hindustan Motors for the Province of Jammu.

4-17. The dealers for Hindustan Motors for the Province of Kashmir were originally "Kashmir Motors, Srinagar". In August 1955 this firm consisted of four partners—Ali Shah, Feroz Nath, Kaul, Pran Nath and Janki Nath. Now it is the case of the Government that having secured the dealership of the Hindustan Motors products for the Jammu Province, the family was eager to acquire the agency for Srinagar also, and for that purpose desired to enter this partnership composed of Ali Shah and others. They succeeded in doing so in November 1956 and the respondent is charged with having abused his power to enable the members of the family to enter this firm of Kashmir Motors, Srinagar. This is the subject-matter of Allegation 17 to which I will immediately address myself.

4-18. Allegation 17 as set out in the notification reads thus:—

“By the abuse and exploitation of the official position of Bakhshi Ghulam Mohammad undue pressure was exercised on the original owners of the firm M/s Kashmir Motors Srinagar to take in his son Bakhshi Bashir, his maternal cousin Bakhshi Ahmad and his nephew Ghulam Hassan as partners”.

The partnership which it is stated in the allegation as having been brought into existence “by the abuse and exploitation of the official position of Bakhshi Ghulam Mohammad” is evidenced by a document—Deed of Partnership dated 10th November, 1956. Under that deed Ali Shah, Bakhshi Bashir Ahmed, son of Bakhshi Ghulam Mohammad, Ghulam Ahmed a maternal cousin of the respondent and Bakhshi Ghulam Hassan son of Bakhshi Ghulam Nabi (brother of the respondent) entered into partnership for the purpose of carrying on a business in automobile vehicles, parts and accessories. The name of the firm was to be Kashmir Motors. The partners were to be entitled to profits and losses in equal shares, the investment also to be in the same proportion. It was, however, stipulated by paragraph 13 of the Deed that the partnership was to be deemed to have been in existence ever since the business carried on under the name and style of Kashmir Motors was started. It is this partnership that is stated in the allegation to have been brought about in the manner suggested in it. Both in the statement of the case as well as in the affidavit of Ali Shah which has been filed in support of the Government case, it has been stated that undue influence, coercion and threats were exercised by Abdul Majid with the connivance of the respondent on Ali Shah to take the three members of the Bakhshi group into the partnership. As, however, there is no document to bear out this charge and as no oral evidence has been led to prove this case of pressure being exercised on Ali Shah, I would necessarily have to hold that this case of pressure spoken to in the affidavits and in the statement of the case is not established.

4-19. It was, however, submitted that even on the basis of the documents a case of undue pressure was established. The argument in support of this contention was that the Kashmir Motors was a firm which had been started as early as August 1955 and that the partnership that was entered into on 10th November, 1956 was merely a continuation of the earlier partnership as seen from clause 13 referred to earlier, and that the manner in which the partners other than Ali Shah dropped out of the partnership formed in August, 1955, when the three members of the family of the respondent entered the firm reconstituted by the deed dated 10th November, 1956, and the circumstance that Ali Shah, whose share in the firm increased on the retirement of some of his earlier partners, was content to keep a 25% in the new firm, clearly pointed to pressure and coercion, for otherwise it was urged there was no reason why these partners Prem Nath and others should retire or Ali Shah be content with a reduced share of profits.

4-20. In order to examine this contention it is necessary to refer to the documents which proceeded the Deed of Partnership of 1956.

The Kashmir Motors was originally started as a partnership firm consisting of four partners—Ali Shah, one Prem Nath, one Pran Nath and a fourth by name Janki Nath. They had entered into an oral agreement of partnership and this was reduced to writing and a formal deed was executed between the partners on 16th August, 1955 (Document 2 in this Allegation). Just before the written document came into existence the partners had secured on 1st August, 1955 the agency of Hindustan Motors as dealers for the Province of Kashmir (vide Document 6). Each of these partners was entitled to an equal share in the profit and loss which meant that Ali Shah had a four annas share in the partnership. The date up to which this partnership continued is not clear, but it is apparent that it must have ceased to exist and had been dissolved some time before the partnership between Ali Shah and the Bakhshi group came into existence in November 1956. What happened to the share of Pran Nath and Janki Nath at the dissolution of this firm is not shown by any documentary evidence but what, however, we have is a Deed of Dissolution of partnership of a different firm doing business in the name of Ali Shah Prem Nath which by its name and by the terms of the document (Document 3 dated 7th November, 1956) appears to have been composed of Ali Shah and Prem Nath. In this document, there is a reference to the shares of Ali Shah and Prem Nath in Kashmir Motors. This reads :

“(c) The firm (of Ali Shah Prem Nath) had invested some money in Kashmir Motors Srinagar from the partnership assets wherein the shares of the parties are three annas each. The share of three annas of the first party Shri Prem Nath has been by virtue of this deed transferred to party No. 2.....Ali Shah and henceforward party No. 2 shall be the owner of all the 6 annas share in that business”.

On the basis of this recital it was submitted on behalf of the Government that Ali Shah became entitled after this deed dated 7th November, 1956 to at least a 6 annas share in the firm of Kashmir Motors; and that he was deprived of a 2 annas share in it by the introduction of the Bakhshi group who between themselves became entitled to a 12 annas share in the Kashmir Motors.

4-21. I feel, however, unable to accept this argument based on clause (c) extracted earlier. In the first place it speaks of Ali Shah and Prem Nath being entitled each to a three annas share. It is not clear how Ali Shah became entitled to a three annas share since the Kashmir Motors which came into existence under the deed of 16th August, 1955 was continuing up to that date. In the absence of better material I am unable to read the clause as implying that on 10th November, 1956, there was a continuing partnership in which Ali Shah had a 6 annas share—as that would leave the identity of the other 10 annas shares in the air, and without specification. I am inclined to read this clause as merely meaning that Prem Nath went out of Kashmir Motors, the other two Pran Nath and Janki Nath having evidently left even earlier, and so far as the assets of Kashmir Motors were concerned Prem Nath conceded that he had no further interest in it, he having received the entirety of the monies due to him on settlement. If this construction be adopted,

it would be apparent that the original firm of Kashmir Motors had come to an end by dissolution or as it is more likely by the retirement of the other partners and save and except that that name was utilised by the partnership which came into existence on 10th November, 1956, it had no connection at all with the earlier firm. The reference in paragraph 13 to the partnership having deemed to have been commenced ever since Kashmir Motors came in, was evidently inserted in order to obtain the benefit of the agency of Hindustan Motors which was enjoyed by the business run under the name of Kashmir Motors. Except, therefore, that Ali Shah brought in the name Kashmir Motors as the one under which the new business was to run, there was really no connection between the previously existing firm and that which came into existence between Ali Shah and the Bakhshi group in November, 1956. It would follow from this that no inference adverse to the respondent can be drawn from a comparison of documents 3 and 4. In other words, there is no proof that Ali Shah suffered any detriment by reason of Bashir and his relations becoming partners of Kashmir Motors. I, therefore, hold that the charge set out in Allegation 17 is not established.

5-1. After having entered into partnership with Ali Shah in Kashmir Motors and thus having secured an interest in the dealership of the Hindustan Motors in both the provinces of Jammu and Kashmir, the next step of Abdul Majid was to obtain an agency for heavy type vehicles—Ashok Leyland for the entire State of Jammu and Kashmir. This agency was secured by him in December 1956 and the name in which this business agency was run was Jay Kay Automobiles, Srinagar who were the sole dealers for the province of Kashmir and a concern with the same name started at Jammu in 1957 which held similarly the sole agency for the province of Jammu. Besides the agency for these vehicles, these two concerns also obtained the sole dealership for Exide Batteries each for its area in the State. Both these firms were subsidiaries of Feroze & Co., the parent family concern. Jay Kay Automobiles Srinagar was a partnership which included strangers. There were really three groups among its partners and they were Abdul Majid and his wife Maqsooda Begum representing the family, Mr. & Mrs. Bedi and Mr. & Mrs. V. D. Puri. Jay Kay Automobiles, Jammu was also similarly constituted with Abdul Majid and his wife Maqsooda Begum representing the family, Mr. & Mrs. B. K. Bedi and one S. Narinder Singh. Neither as regards the formation of this partnership nor in respect of any of the transactions of this firm with the Government is there any charge of abuse of power on the part of the respondent, but this firm comes in incidentally when an order for 12 Ashok Leyland vehicles was placed by the Government with it in June 1957. The use which is sought to be made of this order for these vehicles is that it constituted a part of the pressure which was exercised on the Tata Locomotive & Engineering Co. (hereinafter referred to as TELCO) to induce them to appoint Bakhshi Bashir Ahmed as the agent for their products including Tata Mercedes Benz vehicles etc. for the province of Kashmir which is the subject-matter of Allegation 16 to which I shall immediately proceed.

5-2. I have referred to the firm of Kashmir Motors and J&K Automobiles, Jammu and Kashmir which were the first ventures of the

family in the field of automobile trade. But these three it would have been noticed were all partnerships with strangers. The first time, however, when the family started by itself a concern for exploiting a sole agency for automobile vehicles, was when Fairdeal Motors, Srinagar was commenced in October 1957 in regard to which a formal partnership deed was executed on 29th November, 1957. During the period of the family's fortunes between 1957 and 1960, the main profit-earner among the several concerns dealing in varied lines of business run by the family was the Fairdeal Motors, Srinagar. This firm secured the agency for TELCO, Tata Mercedes Benz (T.M.B.) trucks and passenger chassis for the Province of Kashmir which proved literally a gold mine. An examination of the income-tax assessment orders of the family shows that during the period 1957 to 1960 this concern earned on an average not less than Rs. 1½ lakhs per year.

5-3. In view of the geographical situation of the State with the rail-head at Pathankot being over 60 miles from Jammu and about 250 miles from Srinagar a greater part of which consisted of hill roads and most of the articles needed for everyday use having to be imported from the rest of India, and the handicrafts as well as horticultural products of the State having to be exported the need and value of transport vehicles of stout construction capable of withstanding the strenuous hill journey can easily be appreciated. That was precisely the inducement for the Jay Kay Automobiles obtaining the dealership of Ashok Leyland vehicles. But T.M.B. vehicles were more popular and had been having a good demand in Jammu as well as Kashmir and particularly in the latter area; and in fact Government had purchased 66 of these vehicles in 1955 and in 1956 39 of them besides 8 Mercedes Cars (vide Statement of purchase of vehicles annexed to the reply of Bashir Ahmed to Allegation 16).

5-4. It is in the context of these facts that the submissions of the Government in regard to the manner in which Bakhshi Bashir Ahmed and his uncle Abdul Majid who had been deputed by the respondent to arrange for his future obtained the agency of T.M.B. vehicles and other TELCO products for the Province of Kashmir, has to be understood.

5-5. The case of the Government is, that this agency was secured for Bakhshi Bashir Ahmed, who was to run and manage Fairdeal Motors Srinagar, by the respondent abusing his position as the Prime Minister of the State. The allegation as notified is fairly detailed and may now be set out—

“(a) Up to the year 1957 the agency for Tata Mercedes Benz vehicles was held throughout the J&K State by Shri C. L. Gulati, proprietor M/s National Garage, Jammu. During the year 1956-57 Bakhshi Ghulam Mohammad exercised undue pressure on both Shri C.L. Gulati and the Tata Engineering and Locomotive Company, (on the latter particularly by withholding orders from Government for the supply of their vehicles) and thereby induced them to dividing the agency for the J & K State between C. L. Gulati for Jammu Province and Bakhshi Bashir Ahmed S/o Bakhshi Ghulam Mohammad for Kashmir Province.

- (b) The requirement of vehicles of the Transport Department, which had been kept pending for quite sometime, was taken up for consideration immediately after said bifurcation and, at the suggestion of Bakhshi Ghulam Mohammad, the Transport Department made a proposal for the purchase of 100 Tata Mercedes Benz vehicles. This proposal was approved by Bakhshi Ghulam Mohammad in his capacity as Transport Minister. An order for said purchase was placed with M/s Fair Deal Motors in which Bakhshi Bashir Ahmed had a share and through which he was operating the above agency for the Tata Mercedes Benz Vehicles.
- (c) Subsequently the order for 100 Tata Mercedes Benz vehicles mentioned at (b) above was enhanced to 120 vehicles and an advance of about Rs. 33 lacs was made to M/s Fair Deal Motors, against supplies which were delivered much later and against the provisions of rules.
- (d) By means of this agency 1289 Tata Mercedes Benz vehicles were sold by the said Fair Deal Motors between 1957 and 1964, the Commission alone of which sales came to Rs. 20 lacs which accrued to the Fair Deal Motors.
- (e) Bakhshi Ghulam Mohammad thus by abuse of his position as Prime Minister got the agency of Tata Mercedes Benz vehicles for Kashmir Province for his son and obtained for him a lucrative and recurring business."

5-6. In view of the terms of the charge notice was issued to Bashir Ahmed under Rule 6(1)(a) and both he and the respondent have filed their replies to the charge.

5-7. Pausing here, I have to point out that though paragraphs (a), (b) and (c) are distinct charges and have to be dealt with independently, paragraph (d) merely summarises the financial benefits accruing to the family by reason of this agency while paragraph (e) is really redundant since what is stated in it is already covered by paragraph (a). In the result, it would be sufficient if I consider the case of the Government in regard to paragraphs (a), (b) and (c) and I shall proceed to take them up in that order.

Paragraph (a) of Allegation 16.

5-8. The facts of the case are set out in this paragraph in a fairly detailed manner and it is not therefore necessary to make any extract from the statement of the case for explaining the charge. These facts are : From 1954 up to September 1957 the agency of TELCOS for both the Jammu as well as the Kashmir Province of the State was held by Mr. C. L. Gulati, proprietor National Garages, Jammu. This agency was terminated in September 1957 and while Gulati was permitted to retain the agency for the province of Jammu, Bakhshi Bashir Ahmed was appointed as the sole agent and dealer for TELCO products for the province of Kashmir together with a monopoly in regard to the orders of

the Government for these vehicles or their parts etc. for the entire State. These facts are not disputed. What, however, is in dispute is whether this division in the territorial area of the agency of Gulati was brought about by the exercise of undue pressure by the respondent, which is the case of the Government, or whether this charge was due to action initiated by TELCOS themselves, for their own business purposes, in dividing this area and allotting one part of it to Bakhshi Bashir Ahmed, Gulati retaining the other, the latter being the defence of the respondent and of Bashir Ahmed.

5-9. In support of the case of the Government affidavits have been filed, some by the officers of the State and one by Gulati himself, which speak to the incidents and matters which if true would establish the intervention by the respondent to effect this division of agency. These statements which attribute either acts or directions to the respondent, have all been denied by him. Notwithstanding this denial, Government have not chosen to examine these deponents before me to prove the facts stated by them in which event they would have been subjected to cross-examination. I am not therefore placing any reliance on these statements and indeed in view of the directions given by me at the hearing of the 7th August, 1965 even learned counsel for the Government very fairly refrained from relying on these affidavits to prove the facts or incidents stated in them. I, therefore, propose to proceed wholly on the documents filed by the Government in support of their case—the genuineness of these are not challenged—and examine whether they lead to the inescapable inference that it was as a result of an abuse of power on the part of the respondent that this agency was secured. As I have already pointed out, the plausibility of the case of the Government or even the probability or strong suspicion that it could have happened in the manner it did only through the abuse of power would not, in my opinion, be sufficient to establish the charge. The standard of proof which I have set for myself is whether the inference from the documents is consistent with an innocent explanation or whether the only explanation to which one is driven is consistent only with deliberate misconduct on the part of the respondent.

5-10. Before setting out the documents I consider it would be useful to point out that when the allegation as notified speaks of undue pressure having been brought to bear by the respondent for the purpose of securing the agency to Bakhshi Bashir Ahmed and Fair Deal Motors, the pressure is stated to have been (a) on Gulati and (b) on TELCOS.

5-11. In regard to Gulati the case of the Government is that the pressure took the form of getting the company to threaten him with the termination of the agency for any part of the State unless he was prepared to agree to the splitting up of the agency between himself and Bashir Ahmed under which his agency would be confined to the Jammu Province. It was said that faced with the prospect of losing the agency for the entire area of Jammu and Kashmir State, he reconciled himself to giving up the agency for Kashmir as the price of his retaining the agency for Jammu.

5-12. Coming next to the pressure brought to bear upon TELCOS, this was stated to have taken two forms, the combined effect of which induced the company to split up the agency and hand over the best part of it, namely, the territorial area of Kashmir in addition to the entirety of the Government business to Bakhshi Bashir Ahmed. The first form of pressure was that orders which had been decided upon to be placed for TMB vehicles would be and were withheld, as a result of which the company who was appraised of the situation found that they were losing quite a substantial amount of business. The second form of pressure said to have been employed to re-inforce the first was to place an order for a competing make of vehicles—Ashok Leyland—which made it plain to the company, that if the agency were not split up and Bakhshi Bashir Ahmed accommodated, they might lose their entire business regarding the sale of their TMB vehicles to the State Government. The pressure thus exercised on both Gulati as well as on the company, is said to have resulted in the breaking up of the agency of Gulati and the assignment of the most profitable part of it to Bakhshi Bashir Ahmed.

5-13. I shall now proceed to examine the documents that have been placed before me in support of this case. By a resolution passed by the Cabinet on 24th January, 1950, when the respondent was acting as Prime Minister, in the absence of Sheikh Abdullah at the United Nations, a decision was taken to expand and develop regular transport service in the State and make it self supporting. With a view thereto, it was decided—

“(1) That the Jammu and Kashmir Transport Service be run on a purely commercial basis.

(2) That the entire administration and control of the service be vested in the Minister in charge who will be assisted by the Transport Controller pending the appointment of a Board of Directors (The Board of Directors here contemplated has not materialised up to now).

(3) That the powers, administrative and financial, exercised by the Government except of a residuary nature, will in regard to the Transport Department, be vested in the Minister in charge.

(4) That all proposals relating to new expenditure.....will be disposed of by the Minister-in-charge in consultation with the Finance Department.

xxx

xxx

xxx

(8) That the Transport Controller will hold a permanent advance of Rs. 2 lakhs as imprest for day-to-day expenditure.....The advance will be recouped with the previous approval of the Minister-in-charge to the extent to which accounts in respect of the expenditure are rendered by the Transport Controller”.

5-14. From 2nd May, 1949 the respondent was the Minister in charge of Transport right up to 5th September 1958 when owing to a change in the portfolios Shri Sham Lal Saraf became the Minister. There were changes later when again he resumed the transport portfolio.

5-15. Messrs National Garages, Jammu of which Gulati was the proprietor, had been trading in automobiles since 1949. Prior to 1954 this firm held the agency for the sale of Commer, Chevrolet, Bedford and Hillman vehicles for the entire State of Jammu and Kashmir. In December, 1954 National Garages were appointed by the TELCOS as their dealers for the entire State of Jammu and Kashmir and from 1954 onwards the TMB vehicles which the State required were being supplied through the agency of National Garages.

5-16. : It has been stated by the Government that Gulati had at the request of the respondent arranged a course of training in automobile engineering for Bakhshi Bashir Ahmed, the then only son of the respondent, in the factory of a member of the Rootes Group of Factories in Coventry, England and this is not seriously contradicted.

5-17. The order appointing Gulati as TELCO's agents is Document 1 dated 27th December, 1954. The agreement was terminable by either side on three months' notice and the territory for which the dealership was to be in force was the entire State of Jammu and Kashmir. During the currency of this agreement, he was not to deal in any make of vehicles other than TMB vehicles without the specific approval of the TELCOs.

5-18. The evidence makes it clear that between 1952 and 1957 the relationship between Gulati and the respondent and his family particularly with Bakhshi Abdul Majid was very cordial, and when Bakhshi Bashir Ahmed completed his studies at school and got some training in certain automobile works in India, the assistance of Gulati was sought in 1952 for sending Bakhshi Bashir Ahmed abroad to the U. K. to undergo training in the factory of the Rootes Group. The son of Gulati was also proceeding to the U. K. for the same purpose, and Gulati made arrangements for Bashir Ahmed as well being taken into the Humber factory at Coventry for a three year training course. These Statements in paragraph 4 of the statement of the case are not specifically denied by the respondent and having regard to certain facts in relation to the manner in which monies required by Bakhshi Bashir Ahmed when abroad were remitted by Gulati and in particular the correspondence between Gulati and Bakhshi Bashir Ahmed in which the former is referred to as the 'uncle' and superscribed 'yours affectionately', I am satisfied that the facts stated above are true.

5-19. There is, however, one matter regarding which there is some controversy. It is stated by the Government, that it was Gulati who found the finance necessary for Bakhshi Bashir Ahmed's stay and education abroad. This is denied by the respondent as well as by Abdul Majid who has filed an affidavit in support of the denial. Letters to and from Gulati whose genuineness is not impeached undoubtedly show that monies were sent by Gulati. But the case of the respondent and of Abdul Majid is that this was out of the funds provided by Majid or that it was re-paid later. No accounts, acknowledgement or evidence of payment however has been filed by the respondent or by Abdul Majid. But as nothing very relevant turns on the truth or falsehood of this assertion, I do not propose to examine this in more detail.

5-20. Bakhshi Bashir Ahmed who went abroad in 1952 returned to India in the latter half of 1956 after undergoing training in Coventry and thereafter in the factory of Daimler-Benz in Germany. But prior to his return, there were certain matters which transpired in the Transport Department to which reference must now be made. Very soon after Gulati obtained the agency for TMB vehicles, the State Transport Department which had hitherto been purchasing Chevrolet, Commer and Bedford trucks mainly - all of them petrol driven - conducted some tests for determining the suitability of the diesel TMB vehicles. The first test run on the Srinagar—Tangmarg road was made on 23rd December, 1954 and the opinion expressed after the test was that the vehicle had good pulling power and was found sturdy in construction to withstand rough road shocks. The result of this test check is recorded in the file which is Document 3. There was a further test on the Jammu—Pathankot road on 28th December, 1954 (Document 4). After these tests were conducted, the Transport Controller Mr. S. M. Aga put up a note (Document 5) to the respondent as the Minister for Transport proposing that the Jammu—Pathankot fleet be completely dieselised. After referring to the tests of the Mercedes Benz vehicles one of which had been purchased for tests he stated —

“During my recent visit to Delhi I had an opportunity of talking about this vehicle with my counterparts in India who had gathered there to attend the meeting. I understand that Mercedes Benz is a good vehicle and will suit our purpose”.

He went on to suggest that the Government might purchase four chassis which they had then been offered, besides placing an order for 20 more to replace petrol driven vehicles on the Pathankot-Jammu route. In this note he pointed out that the only two types of diesel driven vehicles available were Mercedes Benz and Layland and expressed his preference for the former. He also suggested that the total number required by the Government might be intimated to the company - TELCOs - so that they might arrange to meet the requirements of the Government Departments. This note was placed before the respondent as the Minister in-charge of Transport, who has noted on several pages on its margin his concurrence with the opinions expressed by the Transport Controller. Having obtained the approval of the Minister, an order was placed on 25th January, 1955 with the TELCOs (Document 7) for 24 TMB vehicles comprising three models. TELCOs who desired to expand their business addressed a communication to the Transport Commissioner on 25th May, 1955 (Document 8). In this letter after referring to a discussion at Delhi with the respondent and the latter's order or desire to have eight Mercedes Benz cars and a few station wagons and after quoting their price, the Sales Manager added —

“I had the opportunity of discussing with the Prime Minister (the respondent) at Delhi your requirements of Bus and Truck chassis for J & K Government. He was keen to take advantage of the special discount allotted to Government Departments on purchases of 100 or more vehicles at a time and he expressed a desire to place an order for a total quantity of 100

truck and bus chassis inclusive of what had already been purchased. He wanted me further to discuss details in this behalf with the Transport Controller".

And the further part of the letter is taken up with the details of the price, the technical details of the several models as well as to when these vehicles could be delivered. After this letter was received, the Transport Controller put up a note (Document 9) to the Secretary, Home Department, enclosing the letter from TELCO (Document 8) and stating that the respondent had been pleased to order that a firm order be placed for 8 cars and 72 Mercedes Benz trucks and buses. It will be noticed that 26 trucks had already been ordered and in regard to both these orders it was stated that formal sanction covering them might be obtained from the respondent. In accordance with the respondent's verbal orders of which confirmation was sought, an order was placed with the TELCOs on 27th May, 1955 (Document 10) for 72 TMB truck/bus chassis. The verbal orders of the respondent were confirmed by the Under Secretary to Government, Home Department on 13th June, 1955 (Document 11). The 72 vehicles were not all required for the Transport Department which needed only 45, but as they had been ordered in order to make up the 100, the balance of the 27 units had to be distributed to other Government Departments. This was done on the orders of the respondent himself under which 15 were allocated to the Public Works Department 10, to the Irrigation and 2 to the Education Department and the Chief Engineers of the P.W.D. and Irrigation were directed to arrange for funds for the purchase of these vehicles. Documents 13, 14 and 15 constitute the correspondence relative to giving effect to the orders of the respondent allocating these 27 units to the several Departments. When the Education Department desired to know who placed the order for the two vehicles which they were desired to take (Document 15), the Transport Department replied by stating (Document 16) that this was under the orders of the respondent. There were similar letters from other Departments which were similarly answered (Documents 17 and 18).

5-21. These TMB vehicles ran for about a year without any complaint regarding their performance. Notwithstanding this the needs for a shift in the policy regarding the type of vehicles suitable for the needs of the Department was proposed in a note by Mr. Jamwal, Parts Manager, on 26th February, 1957 to which it is necessary now to refer, the suggestion of Government being that this was to enable pressure being put upon TELCOs to induce them to transfer their dealership to Bashir Ahmed who had then returned to India. In this note (Document 20) he started by pointing out that petrol engines had steadily been giving place to diesel ones as power engines in many fields and particularly in the field of road transport. He was, therefore, suggesting that the entire number of petrol vehicles might be replaced by diesel powered vehicles. Dealing next with the choice of heavy duty diesel vehicles he pointed out that the Transport Undertaking had indented only for a few makes after careful test runs and that no mistakes had been made. Originally they had Commers fitted with Parking engines, but these were not satisfactory and thereafter "with the introduction of Tata-Mercedes-Benz, major portion of the diesel fleet in the undertaking was formed of

this make which is definitely superior to the former type (Commers with Perkin engines) in many respects. Leyland range is the next competitor which is under close study of the technical experts of the undertaking". He followed this with comparative technical data of the two types of vehicles. For the Srinagar-Pathankot road the vehicles required were of a wheel base shorter than 165" which would have smaller turning circles and so only LP 312/36 142" wheel base Mercedes-Benz were suggested since "Leyland has no range between 140" and 150" wheel base". Then as regards the Srinagar city and rural routes, he stated that it was not possible to have Leylands as the roads would not allow the long chassis operation, though some models of Leyland could however be found suitable adding that the startability of the Leyland engine needed a thorough trial. Then in regard to load carriers on the Srinagar—Jammu route he considered that the Leyland range was less suitable for hill operation but Leyland assemblers had marketed full forward control passenger, and goods chassis. He suggested that an 163" wheel base Leyland might be tried as a load carrier. For the Jammu-Pathankot load carrier fleet he suggested Leyland 176" wheel base, and similarly for the city and rural passenger bus service Leyland was recommended. He added a note of caution that the introduction of a new make like the Leyland would call for spare parts stocking problems and further investment in this direction—a difficulty which would be avoided by the standardisation of the fleet. The maintenance problem would be another off shoot of the addition of one more make to the fleet and this would have to be seriously considered when another type of vehicle was being added to their stock. Then he set out the specification details of the types of vehicles offered by TELCO and by Ashok Leyland.

5-22. This note of the Parts Manager was commented upon by the Deputy Transport Controller in a note of his own dated 2nd March, 1957 (Document 21). The Deputy Transport Controller considered that the shorter wheel base Mercedes chassis might be considered for use on the Pathankot Srinagar route, while for the Jammu—Pathankot route he stated that heavy duty vehicles would be more economical and suggested the purchase of Leyland vehicles. He said—

"There are a number of F. F. C (Full Forward Control) Leyland vehicles belonging to private operators playing on Jammu-Srinagar route. The Transport Department may as well give a trial to 163" W. B. Leyland goods chassis on the above route. It need not be mentioned that the make is in very large use all over the world and has proved its worth under various conditions of operation".

In other words, the suggestion was that Leyland vehicles might be used for goods traffic on the Jammu-Srinagar route. He pointed out that no doubt the initial investment on Leyland vehicles was heavier by about Rs. 8,000, but *on account of the increased pay load this extra cost would be made up within a year's time.* It might be useful to compare this with what the same officer had to say in October 1957 by which date Bakshi Bashir Ahmed had become the agent for TMB vehicles. In a technical note which also received the approval of the respondent and on the basis of

which first 100 and thereafter 103 TMB vehicles were ordered, this Deputy Transport Controller said —

“Leyland Comets have no conventional truck chassis to offer and nor can it be utilised to its maximum capacity on account of restricted payload permissible on Jammu-Srinagar sector” (vide Document 37).

To resume the narrative the Transport Controller (Mr. S. M. Aga) agreed with his deputy and stated that “the additional investment will be met by increase in our revenue on account of more payload. It is estimated that the extra expenditure that will have to be incurred at the time of purchase will be realised in one year’s operation”.

5-23. Pausing here, it must be pointed out that the maximum payload on the Jammu-Srinagar route was only 100 maunds and on the Jammu-Pathankot route 160 maunds on the date of the note. This was increased by the Traffic Control Department by exercising statutory powers therefor under the Motor Vehicles Act by a notification dated 22nd November, 1958 (Document 26) by which with effect from 26th November, 1958 this maximum load was increased to 120 and 175 maunds respectively. As the lighter duty vehicles carried the maximum load permitted on this route, the argument regarding the greater carrying capacity of the heavy duty vehicles had really no meaning and the suggestion on behalf of the Government is that that argument was put forward in order to justify by some means or other, the advisability of purchasing the heavy duty Leyland vehicles as against the TMB vehicles which were lighter and cost less. It may be mentioned that the Government records and the files establish that except for 4 TMB vehicles which were supplied on 11th October, 1956 no order for these vehicles was placed between 1st April, 1956 and 31st March, 1957 notwithstanding that in the budget for 1957-58 a sum of Rs. 4 lakhs had been provided under the head “Capital Expenditure, item 1.6—Purchase of Vehicles” (vide Document 19, extract from the Government Budget for 1957-58).

5-24. Document 22 which included the note of the Parts Manager, with the comments thereon of the Deputy Transport Controller and the Transport Controller was placed before the respondent (vide Document 22) and thereafter the note was passed on to the Secretary to Government, Home Department requesting for immediate orders to place orders in accordance with that note. The net result of his recommendation was that an order be immediately placed for 9 bus chassis and 18 truck chassis. For the bus chassis the suggestion was the purchase of TMB 142” wheel base F.F.C. chassis for the reason that that range of wheel base was not available in other makes. In regard to trucks, 12 were needed for the Pathankot-Jammu route and for this Leyland Comets were recommended with a rider regarding the permissible payload being allowed to be carried. Finally he suggested that provision should be made for Rs. 7 lakhs for the purchase of the 9 bus chassis and 18 truck chassis.

5-25. This suggestion as placed before the respondent is found in a note which is Document 23 and that makes rather interesting reading. The Home Secretary who prepared the note states that the Transport

Controller's letter had been examined by the Prime Minister and that he had approved the placing of orders for purchase of 9 Tata Mercedes buses as also for the purchase of 12 Leylands and he went on to add—

“Considering, however, the fact that the Department is short of funds at present the proposal of the TC for purchase of 6 more truck chassis for Pathankot-Srinagar route will remain in abeyance for the present”.
(These were TMB vehicles).

The modified proposal was to be referred to the Finance Minister for concurrence. This suggestion has been marked “Yes” and signed by the respondent in token of his approval. The document ends with a note by the Finance Secretary who states that there was no objection to it because it was within the budget provision. This is dated 11th March, 1957. The Transport Controller was addressed by the Home Secretary in terms of Document 23 and he was informed that he might immediately place an order for 12 Leyland vehicles, but that the purchase of the 6 TMB trucks might remain in abeyance for the present. Document 25 which is dated 1st May, 1957 is a communication from the Transport Controller addressed to Ashok Leyland placing an order for the immediate supply of 12 Leyland Comet.

5-26. This might be a convenient point at which I might stop to examine how far the case of the Government as regards the pressure exercised on Gulati and on TELCOs is made out.

5-27. So far as pressure on Gulati is concerned, learned counsel for the Government fairly conceded that he was unable to establish that pressure was brought to bear on Gulati as alleged in the notification and as stated in the statement of the case, namely, that his entire agency would be terminated by TELCO availing themselves of the three months' notice period provided for in the agreement (Document 1) though, of course, this has been referred to by Gulati himself in the affidavit that he filed, but he has not been examined and there is nothing in the documents to support such a pressure. The charge, therefore, that pressure was brought to bear on Gulati by threatening to cut off the entire agency from him is not made out.

5-28. The other part of this allegation relates to pressure having been brought to bear on TELCOs by with-holding orders from them for the supply of vehicles to Government, and secondly by placing an order with a rival firm and thus in effect threatening a permanent loss of custom.

5-29. In this connection it is necessary to refer to a letter marked “confidential” addressed by Mr. Annaswamy (Sales Manager of TELCOs) who personally conducted the negotiations with Gulati and Abdul Majid, to Mr. Mulgaonkar, General Manager of TELCOs. This is Document 28 and is dated 24th September, 1957, and purports to explain in detail the reasons why he split the territory of the agency between Gulati and

Fairdeal Motors. As Government relied very strongly on it as establishing their case, it is necessary to set out its relevant portions. It reads—

“Our present dealer for Jammu and Kashmir is Messrs. National Garage, Jammu, owned by Messrs C. L. Gulati & Sons Private Ltd. This dealership was given to Mr. Gulati for the main reason that he had a good pull and influence with the Kashmir Government. He recently fell out with the Kashmir Government authorities and today he is not in a position to get us a single order from the Kashmir State Transport. Mr. Gulati is, however, able to secure orders from individual operators who are mainly concentrated in Jammu.

Today the person who is in the best possible position to obtain the Kashmir Government orders for us is Mr. Bakshi Abdul Majid, who has been trading in the name of Messrs Kashmir Motors, handling the Studebaker Car and truck line and has been a partner in Messrs J & K Automobiles, dealing in Leyland trucks and buses. Mr. Majid has already sold the Kashmir State Transport 12 Leyland trucks which they are operating in the Jammu—Pathankot route.

“At present, the Jammu and Kashmir Government is considering the purchase of over 100 vehicles of which about 20 to 25 are required to be of the 7-ton class. *A decision on the purchase of these vehicles has been deferred pending negotiations by Mr. Majid for obtaining the Tata-Mercedes-Benz franchise.* (underlining mine).

“I have discussed the problem with Mr. Gulati as well as with Mr. Majid and have arrived at a solution satisfactory to both the parties. The proposal is to divide the territory into two parts, viz. Jammu and Kashmir, leave Jammu with Mr. Gulati and appoint Mr. Majid for Kashmir. As all the Government business comes from Kashmir, Mr. Majid will be able to get us 100 per cent of the Government orders. *Mr. Gulati is also reconciled to the fact that the Government business will in any case be lost to him* and he will continue to obtain all the individual sales available in Jammu”. (underlining mine).

“I have made a definite understanding with Mr. Majid that he will not only get us 100 of the Government business, but also see to it that no Leyland or Studebaker truck is sold in Kashmir. I shall stipulate this condition in our letter of appointment to Mr. Majid.

“Mr. Majid has a good showroom in Srinagar and is putting up a good workshop which will be in charge of Mr. Bakshi Bashir Ahmed, who is the son of the Kashmir Prime

Minister and who has had training at the Daimler-Benz factory in Germany”.

And enclosed with this letter were the draft letters to be addressed to Mr. Abdul Majid and Mr. Gulati conveying to each the terms on which the company were offering to them the sole agencies for the two provinces of the State. Naturally Annaswamy's letter (Document 28) is the sheet-anchor of the Government's case and the submission of learned counsel for the Government is that every one of the statements of fact found in it and the inferences drawn by the writer are fully justified and indeed are made out by the official records filed in support of their case. I have therefore, to deal with the contents of the letter in detail, but before doing so I shall briefly refer to the correspondence by which the agency for the area of Kashmir was allotted to Bashir Ahmed and the firm which he was to manage—the Fairdeal Motors.

5-30. Document 28 itself refers to the fact of the draft letters to Abdul Majid who was negotiating on behalf of Bashir Ahmed and Gulati as being enclosed. Document 29 is the draft of the letter addressed to Abdul Majid care of Feroze & Co., Srinagar. After referring to the discussions which TELCO's Sales Manager had with Abdul Majid, it states that the dealership of TMB vehicles for the State of Kashmir excluding the province of Jammu was offered to the addressee and the terms and conditions of this agency were to be—

- (1) The business was to be handled under the name and style of Fairdeal Motors with the headquarters at Srinagar.
- (2) The names of the partners of the Fairdeal Motors were to be forwarded to the company.
- (3) The showroom at Srinagar where Kashmir Motor's sign-board had been put up, was to be used exclusively for the TMB vehicles, the Kashmir Motors' signboard to be removed within 12 months.
- (4) Modern workshop and service station had to be set up.
- (5) Service personnel had to be trained in Jamshedpur.
- (6) An initial order for spare parts worth Rs. 10,000 was to be placed.

The draft as it originally stood stated in condition (7)—

“We note that your associate companies, Messrs Kashmir Motors and Messrs J & K Automobiles handle products competitive of Tata-Mercedes-Benz vehicles. It is clearly understood that you will use your influence and divert the energies and resources of these companies towards the sale of Tata-Mercedes-Benz vehicles in your territory”.

This was altered in manuscript to read as—

“This dealership is offered to you on your specific assurance that you will obtain for Tata-Mercedes-Benz vehicles not only 100% of the Kashmir Govt. business but also see to it that no Leyland or Studebaker truck or bus is sold in Kashmir through your associate companies, Messrs Kashmir Motors and J & K Automobiles”. (underling mine).

Then followed other conditions which are not relevant in the present context and are, therefore, not set out. The draft was evidently approved by the superior officers of TELCO subject to inconsequential variations, for we find the entirety of it copied out in Document 30 which is the final letter addressed to Bakhshi Abdul Majid conveying to him formally the offer of dealership. This letter is dated 25th September, 1957. After the letter was received by Abdul Majid it was handed over by him to Bashir Ahmed who was intended to manage Fairdeal Motors which was to operate the agency. The letter was sent in duplicate—one copy to be retained by Abdul Majid and the other to be returned to the company duly signed in token of acceptance. Document 30 which has been produced by Government, is the duplicate obtained from the company which bears the signature and acceptance of Bashir Ahmed at the end of the letter. When he signed the acceptance, Bashir Ahmed made certain changes in this duplicate copy to which some reference must be made. To start with the corrected the name of the addressee from ‘Bakhshi Abdul Majid’ to his own name ‘Bashir Ahmed’. Then coming to clause (7) he struck out in manuscript the words in the sentence which I have extracted from this clause earlier, namely—

“.....your specific assurance that you will obtain for Tata-Mercedes-Benz vehicles not only 100% of the Kashmir Government business but also see to it.....”

so that after this deletion the sentence ran—

“This dealership is offered to you on your specific assurance that no Leyland or Studebaker truck or bus is sold in Kashmir through your associate companies.....”

and he initialed the deletion. As there is no doubt from the text of the draft as well as from the covering letter (Document 28) that Abdul Majid gave a specific undertaking that he would secure for TELCOs the 100% of Government business so far as buses and trucks were concerned, the only object which one can attribute to the deletion of this condition or undertaking from the agreement is that it was not considered either prudent or desirable to state this openly. In this connection I attach significance to the circumstance that when Bashir Ahmed suggested the alteration in clause (vii) he did not protest by saying that this had not been agreed to, and suggested a modification which was thought to be as good so far as the TELCOs were concerned.

5. 31. When returning Document 30, Bakhshi Bashir Ahmed as partner of Fairdeal Motors on its letter-head sent the covering letter

addressed to the Sales Manager (vide Document 32) in which he wanted certain clarification to be made and the main part of it related to whether Government orders placed with Fairdeal Motors while the Government was at Jammu would also be covered by his agency which the company answered in the affirmative as per "their previous understanding" and in token thereof addressed a letter to the Transport Controller (Document 33) by which the latter was informed that Fandal Motors would handle all orders of the Jammu and Kashmir Government Transport irrespective of whether the vehicles were required for operation in Jammu and Kashmir and a copy of the same was also sent to Fairdeal Motors who were addressed on the matter by a separate letter also (Document 34). This completes the narrative and correspondence in relation to the bifurcation of this agency and the constitution of the Fairdeal Motors with Bakhshi Bashir Ahmed as its managing partner to handle the business of TELCO agency for the province of Kashmir with the monopoly of all Government business whether the same emanated from Kashmir or from Jammu. I shall now revert to the terms of Document 28 which as I have said earlier, forms the basis upon which the Government rely to support their case as to the circumstances in which the agency came to be offered to Fairdeal Motors. I should add that the genuineness of this letter is not disputed, only it is stated that the views expressed therein represented mistaken notions of the facts which Mr. Annaswamy entertained in September, 1957.

5. 32. Now, if Document 28 sets out the facts correctly the Government come very near to establishing their case. It is, therefore, necessary to analyse this letter closely and ascertain whether its contents are true. It will be seen that it starts by saying that the dealership was given to Gulhati for the reason that he had a good pull and influence with the Kashmir Government. Gulhati entered the automobile business in 1949 and was a dealer, among others, for Chevrolet cars and for Chevrolet Commer and Bedford trucks. During 1949 the State Government ordered and obtained either for themselves or for connected organisations 121 Chevrolet trucks and they purchased vehicles of no other make. During the year 1950 they purchased 58 Chevrolet chassis and 50 Bedford chassis. In 1951 the Government were supplied 6 Chevrolet vehicles, 30 Commer vehicles and one Bedford truck. During 1952 the Government were supplied 8 Commer & 17 Chevrolet vehicles, besides some cars of other makes. During 1953, 37 Chevrolet chassis, 4 Commer vehicles and 33 Bedford trucks, besides some cars of different makes were supplied to the Government. During 1954, 25 Chevrolet trucks and vans were purchased, besides 4 Dodge trucks. In 1955 the purchases included 66 Tata-Mercedes-Benz vehicles and 13 Dodge trucks and in the year 1956, up to March 1956, 43 TMB vehicles were purchased and between 1st April, 1956 and 31st March, 1957 4 TMB vehicles which were supplied on 11th October, 1956. Four TMB trucks were supplied on 18th April, 1957, the order must have been much earlier and thereafter we get this orders for Ashok Leyland. From the figures I have quoted and the makes ordered, it would be seen that except for the Dodge trucks, all the other were makes for which Gulati was the agent—and with Gulati becoming the dealer for TELCOs at the end of December, 1954, we find quite a number of TMB trucks ordered from 1955 onwards. No doubt the respondent has strongly

repudiated the suggestion contained in the first paragraph of this letter, but I consider that the facts belie the denial.

5. 33. The question of any favour shown to Gulati is no part of the charge and the only reason I am examining this question is for determining whether the statements contained in this letter marked "confidential" are true or not. Its genuineness not being disputed and having regard to the time at which it was written and its purpose, one would need to have convincing evidence to show that the views expressed in it did not represent an appreciation of the facts as then seen.

5. 34. The next part of the letter deals with Abdul Majid and states that he was the person who was in the best possible position to obtain for the TELCOs Government business. As stated earlier, when the agency of TELCOs was taken up by Fairdeal Motors, it was started as a subsidiary of Feroze and Co. of which Abdul Majid was in management. That is why Abdul Majid played the principal part in the negotiations which culminated in this agency and Abdul Majid himself in the reply that he has filed admits that he discussed the question of the agency with Annaswamy and arrived at the agreement by which he was appointed as the dealer for Kashmir by running his business in the name of Fairdeal Motors. In this context, I might recall clause (vii) of the draft letter to Majid appointing him agent for TELCOs (Document 29) according to which Majid assured TELCOs that he would "obtain for T.M.B. vehicles not only 100% of the Kashmir Government business....."—which indicates the type of discussion which should have led to such an undertaking.

5. 35. The case of the Government in respect of these negotiations was briefly this : Bashir Ahmed returned to India after undergoing training in the Rootes Group Factory Coventry and in the Daimler-Benz Factory at Mann in the middle of 1956. Having been trained in automobile engineering the respondent desired that he should enter the automobile business and as he had been trained in the Daimler-Benz Factory—foreign collaborators with Tatas in the manufacture of TMB vehicles—he thought it would be best for his son to obtain the agency of TELCOs and with a view to achieve this purpose, set about the task. The manner in which the respondent participated in the discussions and brought pressure to bear on Gulati is spoken to only in the affidavits filed, but as the deponents of these affidavits were not examined before me, I do not propose to refer to the facts they state.

5. 36. So far as the respondent is concerned, his case is that after his son returned from abroad he put him in charge of his brother Abdul Majid with instructions to find a proper opening for him. If this is so, it would mean that Majid was acting on the instructions of the respondent in negotiating the agency. But as to what exactly transpired at the meetings which admittedly took place between Majid, Gulati and Annaswamy the Sales Manager of TELCOs, we have no documentary proof or regarding the identity of the other participants if any. But as Gulati's version has been denied by Abdul Majid and it receives no corroboration for documents, I am omitting that part of the Government case as unsupported by acceptable material.

5. 37. The latter part of paragraph 2 of Document 28 refers to the order for 12 Leyland vehicles as a thing which would be repeated, if the arrangement which Mr. Annaswamy was suggesting, was not put through, and this has to be taken along with the next paragraph in which a reference is made to an order for 100 vehicles being held over for the finalisation of the new agency. I have already referred to the order placed for 12 Layland vehicles and the noting of the respondent on which this was ordered.

5. 38. I shall next consider the correctness of the statement that the Government were considering the purchase of over 100 vehicles and to the decision regarding the purchase of these vehicles being deferred pending negotiations by Mr. Majid for obtaining the TMB franchise, and this it would be recollected is part of the pressure on TELCOs which is set out in the charge. I have already pointed out that in June 1955 within a short time after Gulati got the agency for TMB vehicles, an order for about 100 vehicles together with eight Mercedes Cars was placed with the TELCOs and how this was distributed among the several Departments of Government. In 1956 again, as I pointed out, though a provision had been made in the budget estimates of a sum of Rs. 4 lakhs for the purchase of vehicles, just four vehicles were ordered which were supplied in October 1956 and no other vehicles were ordered or purchased during the financial year 1956-57. There is no explanation offered for this except, of course, to say that there was no need or no funds. It is however somewhat significant that just at the time when the negotiations between Abdul Majid and Annaswamy were started we have the technical note (Document 20) at the end of February 1957 in which the comparative suitability of TELCO vehicles and of Leylands was discussed. The exact point of time when there was a meeting between Annaswamy and Abdul Majid (which even according to the latter did take place in connection with his taking over the agency for TMB vehicles) is not clear from the records, but that it took place early in 1957 is common ground. That Gulati should have resisted the attempts to deprive him of the agency for an area which brought him the most business is not merely natural and probable but certain and I, therefore, accept it. If he was resisting, then it would follow that pressure would have to be brought to bear upon TELCOs to overcome that resistance so as to obtain the agency for Abdul Majid and his group. Pausing here, I might mention that Abdul Majid in the reply that he has filed states that it was not he that approached TELCOs but that the Sales Manager approached him and persuaded him to accept the agency which he did, but that does not, however, improve the case of the respondent because a question would arise in a more acute form as to why TELCOs thought it was in their business interest to drop Gulati so far as one part of the territory was concerned and hand over that territory to Abdul Majid. It is in the context of this feature that I consider that the latter Document 28 and paragraphs 2 and 3 of it as setting out the bare truth. If the Government had not purchased any vehicles worth mentioning for the Transport Department during 1956-57 and that was the period when the number of trucks purchased was the lowest, it necessarily meant that during the coming year or years that deficiency would have to be made up and the statement, therefore, that the Government had need for purchasing about 100 vehicles seems to me to reflect the truth as the

sequel shows being either what he had been expressly told or what he had inferred. Under Documents 20 and 21 a case had been made out for the purchase of Leyland vehicles for the reason that even though heavier and more costly to buy and to maintain still, having regard to their pay load they would repay this excess by the additional revenue they would earn. Grounds had been prepared for placing an order with a rival firm which in the circumstances could only mean a threat to TFLCOs in the event of their not coming to terms with Abdul Majid. I have already pointed out that the calculations on the basis of the pay load for determining the economy in the use of the Ashok Leyland vehicles were deliberately based on data known to be incorrect having regard to the maximum pay load fixed by the Registering Authority under the Motor Vehicles Act. It is in this context that significance attaches to the part the respondent played in (a) directing the placing of an order for 12 Leyland vehicles which was done on 1st May, 1957 and (b) keeping in abeyance the order for the purchase of the TMB vehicles (vide Document 23).

5. 39. It was evidently this that finally induced Annawamy, the Sales Manager, to take a decisive step in the matter of entering into an agreement with Abdul Majid and naturally this forms a significant part of the reasoning on which he recommended his proposal to the General Manager. In passing it might be mentioned that the ordering of the Leyland vehicles served a double purpose because on the one hand while it showed to TELCOs the danger to them of what would happen if they did not proceed to enter into arrangements with Abdul Majid, it was a direct benefit to Abdul Majid himself who was the agent for these Leyland vehicles under the name Jay Kay Automobiles, Srinagar, though it might be added that this being a partnership concern the benefit that he got was only fractional. It was exactly when this order was actually placed that Annaswamy got moving and he states in paragraph 4 of his having discussed the problem with Gulati as well as with Abdul Majid who according to paragraph 2 was the person who was "in the best possible position to obtain Government orders for TELCOs". The proposal was to divide the territory into two parts, leave Jammu with Gulati and appoint Abdul Majid for Kashmir. All the Government business was to come through Abdul Majid who was also to undertake that 100% of the Government business would go to TELCOs. Now it passes one's understanding how Abdul Majid could have given such an undertaking that no Leyland or Studebaker truck would be ordered by the Government and that they would order only TMB trucks unless it be that he had the approval or consent of the respondent who besides being the Prime Minister was also Minister of Transport to give such an undertaking.

5. 40. I shall at this point refer to the reply of the respondent to this charge in order to examine how far that reply and the points raised in it are consistent with the documents whose genuineness is not in dispute. In his reply to Allegation 15 the respondent has raised a number of points which he calls "preliminary" and on the basis of which he has questioned my jurisdiction to enter upon or make this inquiry. As they have all been dealt with by the courts and have finally been negatived by the Supreme Court, it is not necessary to refer to them, apart

from the fact that I consider it beyond my jurisdiction to pronounce upon or resolve those objections. His second line of defence, on the "preliminary ground", is based upon a reference to the manner in which he had conducted the administration during the period when he was the head of the Government by referring to the opinions of some political leaders, journalists and others. These, however, I do not consider as relevant, because what I am constituted as Commission to inquire into are certain definite charges of misconduct and malpractices and in conducting that inquiry, the encomiums paid to him by others in regard to the reputation that he enjoyed have not much bearing. I am, therefore, not referring to them either. Discarding these, the respondent starts by asserting that he had never shown any favour to his relations and that to his knowledge, none of them have exploited or taken advantage of his official position. In paragraph 22 he states that his son had been living separately since his return from abroad and that during the period when he was Prime Minister he lived alone, his relations living away from him, and that during this period he was so pre-occupied with his official work that he had hardly any time to meet his son or talk to his other relatives. He adds that he was not aware of the business in which his relations were engaged except in very general terms and that he took no interest in any business carried on by any of his relations. These are his defences in general terms and I do not propose to deal with them at this stage because in respect of each allegation, the question as to whether it was at the respondent's direction or with his knowledge and consent that any particular act to the benefit of any particular relation was done, would have to be considered before arriving at a finding of misconduct against him.

5. 41. Coming now to the particular points which have been raised in the statement of the case filed in relation to Allegation 16, the defence of the respondent is that he never interfered with the recommendations of the Department as he completely relied and was entitled to rely on the advice tendered to him by his departmental officials and he says that the task of making arrangements for the purchase of the vehicles was left entirely to the Transport Commissioner. In regard to Gulati he says in paragraph 27 that he had received certain complaints from parties regarding the placing of orders for purchase of vehicles by the Department with regard to purchases from National Garages owned by Gulati and Messrs. Fairdeal Motors. There is nothing, however, in the files to support this statement and when he says that he had these complaints examined by the Department but saw no reason to interfere with the action taken by the Department, it is difficult to appreciate what he meant though according to him there are certain files and notes by the Transport Controller regarding these complaints. I have not been able to find any of these complaints on the files and as the respondent has not appeared at the enquiry after he filed his reply, it has not been possible to ascertain which exactly are the files he has in mind. As the Government did not purchase any vehicles through Gulati after 1957, the complaint as regards Gulati must have been at an earlier period and there is no trace of any complaint against him either by TELCOs or by the Government between 1954 and 1957 during which period he was the agent of TELCOs or during any earlier period either. Even Abdul Majid in his reply does

not say that TELCOs had any complaint against Gulati nor does he assign that as a reason for the company dividing the territory over which he had the agency. The files of the company in relation to this bifurcation have been obtained by Government and they do not disclose the existence of any complaint against Gulati either independently or as a reason for depriving him of the distribution rights over Kashmir.

5. 42. The positive statement of the respondent is that he had asked Abdul Majid to make suitable arrangements for a career for his son who was interested in automobile engineering. Even Bakhshi Bashir Ahmed's going to England and later to Germany for training were not, according to the respondent, at his instance, but were the arrangements made by Abdul Majid since he had no time to keep in touch with the educational programme of his son. As regards Gulati financing Bashir during the period of his stay abroad which is asserted by Gulati in his affidavit supported by certain documents which he has produced and of which the respondent had inspection, the respondent when dealing this statement is extremely cautious and instead of using strong expressions like "stoutly deny" or "emphatically repudiate" is content to say he does not admit it. In several paragraphs the respondent repeatedly states that the State Government should be called upon to produce the files relating to the several transactions, suggesting that they would support him, but all the files of which he gave any details have been called and there is nothing in them which would contradict or even modify the inferences to be drawn from documents which the Government have included in their folders. For instance, in paragraph 37 while dealing with the statement regarding the purpose for which the Leyland vehicles were purchased, after denying that he directed the Transport Controller to submit proposals for the purchase of these vehicles, he affirms that the proposals were examined by the Finance Department and relies on the reasons set out in Document 22 as the real ones which induced him to purchase these vehicles and keep in abeyance the purchase of the TMB vehicles. But the correctness of this statement has to be judged not with reference to that document alone but with reference to what preceded this transaction and what followed. The respondent adds that he recalled that there were other occasions when Layland vehicles were purchased by the State, but this is forgetting a document which Bakhshi Bashir Ahmad who has filed a reply along with him and in terms practically identical with his, has filed before the Commission. I am here referring to Document 7 which Bakhshi Bashir Ahmed has annexed to his statement which is a statement of the vehicles purchased by and through the Government Transport Department between the years 1948 and 1958. It shows that Leyland vehicles were purchased for the first time in May-June 1957 and thereafter two more were purchased in the year following. For the subsequent period I have had a statement prepared from Government records as to the make of the vehicles purchased. This shows that in 1959 no Leyland were purchased, nor in 1961-62 and 1962-63, and none until 1964 when five Leylands were purchased. The recollection of the respondent, therefore, as regards other occasions when Leylands were purchased is obviously mistaken.

5.43. The rest of the paragraphs are concerned to deny that

he had any hand in the arrangements by which Bashir Ahmed became the agent for TELCOs for the Kashmir Province, and of the circumstances in which according to the Government that agency was brought about. In doing so he states that Annaswamy's note (Document 28) represented his own fancies and speculations. After denying that Abdul Majid had anything to do with the purchase of 12 Leyland trucks, he has said that the decision to purchase the 100 vehicles had not been deferred pending negotiations with Abdul Majid as stated in Document 28. He says that there was no proposal then put forward before him for the purchase of 100 vehicles of which Annaswamy said a considerable number might be of the Heavy Duty type. The respondent might be right in the sense that on paper there was no proposal, but the absence of any note on the file is not inconsistent with the statement of Annaswamy in Document 28 for we find that within a month of this letter dated September 1957 we have the proposal in October 1957 (vide Document 6 in Allegation 22) put up to the respondent which he approved very soon thereafter, for the purchase of 100 and thereafter 103 vehicles of which first 11 and later 14 were of the heavy duty type. I do not, therefore, see any force in the denial by the respondent of the truth of the statement of Annaswamy that the Government had plans to purchase 100 vehicles even by September 1957. Of course, there was no formal proposal yet but Annaswamy's statement is only that the proposal would materialise only if Abdul Majid were appointed the dealer and that is what actually happened. In these circumstances I consider that the statements contained in Annaswamy's letter are fully borne out by the documents and the facts which admittedly transpired.

5. 44. There is one part of the case of Bakshi Bashir Ahmed to which it is now necessary to advert. He states that the bifurcation of the territory was really part of a general scheme of territorial readjustment which the company was making not only in Jammu and Kashmir but in several other areas and that it was based upon the business needs of TELCOs with a view to expanding their volume of sales and that it was merely incidentally that Majid or he happened to be selected as sole dealers for the Kashmir Province. In support of this statement Bashir Ahmed has relied upon an affidavit of Annaswamy and secondly a note which according to him was prepared by S. K. Raina, the Transport Commissioner. In his affidavit Annaswamy states that in the interest of effective expansion of TELCO business additional dealers were appointed in 1957 and 1958, among them at Kashmir and that the bifurcations were effected for the sake of better sales and service to customers. He supports the respondent in stating that he did not discuss with or seek his intervention regarding placing orders with his firm in 1955 and then he adds after stating that there was no pressure by any one for giving the dealership to Abdul Majid or Bakshi Bashir Ahmed—

"The reason for deciding upon the bifurcation of dealership in the Jammu and Kashmir State was that Government Transport officials and several other private persons were not satisfied with the service rendered for our vehicles and our products were losing their popularity and preference."

He goes on to state that he had known Bakshi Abdul Majid and that he sounded him and then entered into the arrangement by which the territory was bifurcated between Gulati and himself. As regards this affidavit I have a few comments to make. In the first place as the facts stated by him are not admitted by Government, it was necessary for the respondent to have called him as a witness if it was desired to have those facts established. He speaks of complaints having been received from the Government and from the public, obviously these would be in writing but he has not produced any contemporary correspondence or document to support that assertion. If there were any complaints against Gulati even by private purchasers, it is not explained why he was retained for Jammu area. If the bifurcation was effected as a result of a policy decision taken by the company dictated by the need for expanding their business one would expect that there would be files containing proposals in writing with reasons for this step, but neither he nor the respondent have produced any such document. Annaswamy had just before the bifurcation written the confidential letter to the General Manager Mr. Mulgaokar (Document 28) but in the affidavit he has filed on behalf of the respondent he has no explanation to offer as to why he had stated the matters which are found in Document 28. In the face of these features I cannot attach any value to the statements contained in this affidavit which are really contradicted by his own earlier statements made when he had no motive to speak an untruth. In passing it might be mentioned that Fairdeal Motors continue to be the agents of TELCOs for the Kashmir area and hence there are business reasons why Annaswamy may be expected to support Bashir Ahmed, apart from having to deny the imputation that a firm like TELCOs was pressurised in the manner suggested in Allegation 16(a).

5. 45. The other document purports, as I have stated, to be a note by Mr. S. K. Raina and the object of filing this document is to rely on a passage contained in it explaining the bifurcation as having been due to the same reason as that which is found in the affidavit of Annaswamy to which I have referred. In this note dated 27th March, 1959 which is document 6 annexed to Bashir Ahmed's affidavit, it is stated—

“The dealer (Mr. Gulati) held the sole monopoly of the unit (TMB) in the State up to later part of 1957 but never was any objection raised by any one to Mr. Gulati's sole monopoly. However, during 1957 M/S Tata Locomotive and Engineering Co. Ltd. started bifurcating dealership not only in this State but in many parts of India, most probably to cut monopolies and to ensure prompt supplies to both local sector as well as nationalised Undertakings and they appointed M/S Fairdeal Motors as their authorised dealer for Srinagar region and Mr. C. L. Gulati of National Garage for Jammu region. This action of the Principals was taken independently and the Transport Department or the Government had no hand in it and at no stage were they consulted. Only the Department was apprised of this decision”.

Now Bashir Ahmed has produced the original of this note. The note

starts by saying that he (Mr. S. K. Raina) had gone through the note endorsed in his favour by the Hon'ble Prime Minister and he was submitting detailed remarks as desired to the Prime Minister. If it was a case where the note was in answer or in response, to a query by the respondent, two things might be expected : (1) There would be a query on the file, and (2) the answer or reply by the Transport Commissioner would be handed to the respondent himself. Before proceeding further, I must point out that after this reply was filed, the Government denied the genuineness of this letter and also filed affidavits of the concerned officers of the Transport Department to say that there was no document in the file corresponding to this note, nor of the query in reply to which the note might have been put up. The date which the note bears is 27th March, 1959 and an examination of the files discloses that nothing happened at that period to justify such a note being prepared, as no question is stated to have been then raised impugning the propriety of the manner in which Fairdeal Motors obtained the agency for Kashmir. There was no question raised in the Assembly regarding the propriety of any of the transaction of purchase of motor vehicles at that time, nor does the note form the basis of any action taken by the respondent or the Department as regards the purchase of these vehicles. In view of these circumstances, Government filed a petition No. 35 of 1965 on 23rd August, 1965 requiring Bakshi Bashir Ahmad to produce the note of the Prime Minister referred to in the letter of Mr. Raina and the papers on which the facts in this note about bifurcation and dealership were based. Bakshi Bashir Ahmad was also required to state and explain how he came to be in possession of this document. Bakshi Bashir Ahmad filed an affidavit dated 1st September, 1965 in answer and in this he stated that he had nothing more to say than that the note produced by him had been given to him by Raina in the year 1959 and had remained with him ever since. Why Mr. Raina should have handed over this letter addressed this to the respondent to him in 1959 when the manner in which he obtained this agency was not so far as seen from the files impugned and when except the paragraph which I have extracted there is no other matter in which he could be said to have the least interest, was not explained and this threw great suspicion about the circumstances in which this letter might have come into existence. Besides there are indications in the document itself which appear to show that it might have come into existence not in 1959—the date it purport to bear—but long after, for it refers among others, to the fact that certain of the principal members of the present Council of Ministers (Sarvashri G. M. Sadiq, G. L. Dogra and D. P. Dhar) were trying to pressurise the Department in favour of certain other concerns who were the agents for different types of vehicles and that the Transport Department was resisting this pressure. In none of the files including those called for by the respondent is there any reference to any of these persons, whether they were in the Council of Ministers or outside as having tried to exert any pressure in favour of any concerns belonging to individuals in whom they were interested. By the way how Mr. Raina, who was not Transport Commissioner in 1957, was able to speak about this matter, when there was nothing in the files on which it could be based, shows that it was a document prepared with the sole object of justifying the splitting up the agency on grounds known to be untrue.

5. 46. Mr. Khambatta further pointed out that the note bore no official reference number. Even if it were a demi-official note, it would bear such a number, nor does the query of the respondent referred to in it appear to have any number assigned to it. If it was an official document as Bashir Ahmed claims it was, the question arises as to why it should have been handed over to Bashir Ahmed unless one proceeds on the basis of the Government case, that there was such an identity between the father and the son, that it mattered little to the officers whether they dealt with the one or the other. If the note was handed over to Bashir Ahmed as is claimed, it could only have been at the instance of the respondent which in itself would indicate that the story that he knew nothing about the business affairs of Bashir Ahmed cannot be accepted at its face value. I am, therefore, satisfied that though it is not denied that the signature found on the original which has been produced by Bakshi Bashir Ahmed is that of Mr. S. K. Raina, it is not a genuine document in the sense that it came into existence at the date it purports to bear, besides its contents being designed to serve the case of the respondent for which little support could be had in the official files or as I have pointed out, in the files of the company. There is one further matter to which I might advert by way of completing my remarks on this note by Mr. Raina. The note starts by saying that it was in answer to a query by the respondent, but curiously enough, the respondent does not refer in the reply that he has filed to his having made any inquiries of Mr. Raina and of directing him to prepare a note on the subject raised by him, nor of course does he mention the preparation of any note by Mr. Raina. This, I consider, is a further circumstance why I cannot attach any value to this document which is produced from a custody which is not proper. The submission, therefore, of Mr. Khambatta, learned counsel for the Government, that I should reject the document as one whose genuineness is not proved, and coming from a custody which is obviously not proper appears well-founded supported as it is by the several circumstances to which I have adverted.

5. 47. If Document 6 is put aside as not proved, or as a document whose genuineness is not established, there is no documentary evidence in support of the contention raised by Bashir Ahmed that the bifurcation of territory by the TELCOs between Abdul Majid and Bashir Ahmed on the one hand and Gulati on the other was initiated and brought about by them for expanding their business interests and not by reason of the factors which are mentioned in the confidential note (Document 28) by TELCOs Sales Manager. The result of the discussion therefore, is that I am left with no alternative except to find that Abdul Majid and later Bashir Ahmed obtained this agency because—

(a) TELCOs were satisfied that they could not obtain any orders from the Government, unless an arrangement was made by them with Abdul Majid whereby the latter was given the dealership for the vehicles ordered, with the resultant commission going to them;

(b) that the Government had need for and was desirous of purchasing over 100 vehicles, but in order that TELCOs could secure that order, they found that it was necessary to enter into the agency

agreement with Abdul Majid, the placing of the order being kept in suspense till the finalisation of these arrangements ; and

(c) the TELCOs were clearly shown that orders would be placed with Leylands or other concerns, in the event of the division of agency not being agreed to. In the statement of the case filed by the Government these are the matters which are referred to as the factors which induced TELCOs to split the agency. The documents which have been filed and to which I have made reference, completely establish these facts. I have, therefore, no hesitation in finding that para (a) of Allegation 16 is made out except as to the part which refers to the pressure which is stated to have been exercised on Gulati.

Paragraph (b) of ALLEGATION 16

5. 48. I now go to paragraph (b) of the allegation. Put shortly this was that when the bifurcation was decided upon or put into effect, the Transport Department at the instance of the respondent made a proposal for the purchase of 100 Tata-Mercedes-Benz vehicles which was approved by the respondent as Transport Minister and the order for the said purchase was placed with the Fairdeal Motors by reason of which that firm obtained financial advantage by way of commission etc. That very soon after the agency came into effect there was a bulk order for the delivery of TMB vehicles is established by the documents and is not disputed by the respondent. This was as the result of a proposal initiated by the Parts Manager and Deputy Transport Controller whose note dated 26th October, 1957 (Document 37) recommended the purchase of this number. On 9th November, 1957 the Transport Controller sent a telegram to Annaswamy placing an order for 86 light transport trucks, three light passenger truck chassis and 11 heavy duty truck chassis—totalling 100 vehicles. This was confirmed in writing by a formal letter (Document 36 dated 15th November, 1957). After setting out the models and the other details of the vehicles required and their equipment, it proceeded to stipulate for the terms and conditions for the supply along with the delivery schedule. During November 1957 the company were required to despatch 26 light truck chassis and 11 heavy duty vehicles. The mode of payment was to be : "The cost of chassis will be remitted within two weeks after delivery of chassis ex-your works Jamshedpur".

5. 49. The technical note on the basis of which this order for 100 vehicles was placed is Document 37 and it contains also the working sheet on the basis of which that figure was arrived at. As regards this document, its reference to the Ashok Leyland vehicles not being suitable for the Jammu-Srinagar sector on account of the restricted pay load permissible on that route has already been compared with the note (Document 21) dated 2nd March, 1957 by the same officer who then considered that Leylands were more economical and so suggested their purchase. The figure of 100 was later altered into 103 by adding three more heavy duty vehicles, but as this change and the need for ordering heavy duty vehicles is the subject-matter of a separate charge (Allegation 22), I shall not refer to those facts here. When dealing with Allegation 22 I shall have occasion to discuss the correspondence and conversation,

that took place in relation to the manner of the delivery of these 103 vehicles, but that is not very relevant here and it is sufficient to notice that under Document 38 the Parts Manager wrote to the TELCOs and after referring to the telephonic conversation between the company and the Transport Controller, to arrange delivery of the entirety of the 103 vehicles ordered through Fairdeal Motors, Srinagar in accordance with the delivery schedule already indicated. Document 39 shows that there was a meeting at the residence of the respondent at which the Finance Secretary was present where the question of arranging for funds for the purchase of these 103 vehicles was discussed and Document 40 shows that the proposal made by the Transport Controller for the purchase of these vehicles was seen and approved by the Prime Minister at a meeting held in November 1957 and in this document he has confirmed the verbal orders already given in regard to the purchase of these 103 vehicles (see also Document 41).

5. 50. That immediately after this agency was secured a proposal was put up (vide Document 37) for the purchase of 100 vehicles in the first instance is not in dispute. That document is dated 26th October, 1957, barely one month from the date on which Bashir Ahmed received the offer of appointment as dealer which he accepted. The point in dispute as to this order lies within a very narrow range. On the one hand it is suggested by Government that the officer (the Parts Manager) was instructed by the respondent to put up the note working out a justification for placing an order for 100 TMB vehicles—a note of the kind that we have in Document 37—on the other hand the respondent denies that he had any hand or part in having this note put up and he says that the officer did so of his own accord with a view to place before him the requirements of the Department and that he had argued out the advantages of a particular type of vehicle, namely, TMB, he accepted the same and gave directions for placing the order. In deciding on the truth of the rival versions, there are certain facts which cannot be ignored.

(1) There is the question of the point of time when this proposal was mooted. A question naturally arises as to why this proposal was put forward in October, 1957, coinciding as it did with the time when if the order was placed Bashir Ahmed would get the benefit. Pausing here, I must add that the respondent's statement that he was not aware of the interest of Bashir Ahmed or of his brother or of other members of his family in Fairdeal Motors is undeniably false and is not worth serious consideration. In considering this time factor, I cannot forget the fact that at the beginning of the year in February-March 1957 an appraisal had been made of the requirements of the Transport Department and the present proposal was by the same officer. On the earlier occasion what was recommended was the purchase of 12 Leyland vehicles and 6 TMB chassis of which the former alone were ordered and the latter kept in abeyance. I am far from saying that there was no need for the 100 vehicles, but if there was a need it was not as if it sprang into existence only in October 1957. The fact that there was need all along for these vehicles, but though provision had been made in the budget of Rs. 4 lakhs for the purchase of vehicles, few had been ordered, shows that the officers consciously put up their notes just at a time when the purchase would benefit Bashir Ahmed. If the proposals contained in Document

37 had been made say even 4 months earlier, and had been approved by the higher authorities, the benefit of the purchase would have gone to National Garages of Gulati. If, as I have held, the purchase of the Leyland vehicles was intended as a warning to TELCOs as indeed it did so act, as seen from Document 28, and the order for the TMB vehicles which was suggested in Documents 21 and 22 was withheld on the orders of the respondent, this would in great measure support the statement of Mr. Annaswamy in Document 28 that the Government was desirous of purchasing a large number of vehicles, but that the same was held back to await the result of the finalisation of the agreement between TELCO and Abdul Majid. As the placing of the order for the TMB vehicles had been withheld on the written orders of the respondent contained in Document 23, it stands to reason that no further proposal was put up for the purchase of any vehicles until we get to October 1957.

(2) The intrinsic evidence afforded by a comparison of the note (Document 37) with that prepared a few months earlier (Documents 20, 21 and 22) by the same officer. I have already referred to the contradiction in the two notes as regards the nature of the advantages offered by the two types of vehicles—Ashok Leyland and the TMB.

The circumstances that the officers of the Department made proposals supported by technical data to justify the purchase of these vehicles at variance with their own earlier proposals at a time when such a proposal would have been of advantage to Bashir Ahmed, is in the circumstances capable only of one of the three explanations. Firstly, that they did so on the directions or at the instance of the respondent which is the case of the Government. This has been denied by the respondent and though there is no direct evidence of his instructions to be found on the file, nevertheless it might be a reasonable or even an inescapable conclusion if the other alternatives are not to be accepted. The next alternative is that these officials put forward these proposals at the time they did and in the manner it is found in their notes to assist Bashir Ahmed even without being asked to do so by the respondent or even by Bakshi Bashir Ahmed as according to the latter he had nothing to do with these proposals. They had certainly no personal interest in Bashir Ahmed obtaining his commission on these sales, and this alternative may, therefore, be ruled out. Lastly, it might be that the Transport officials put up proposals which would be to the advantage of Bakshi Bashir Ahmed, without having been directed to do so by the respondent, or without any request or inducement by Bakshi Bashir Ahmed with a view to carry favour with the respondent. But this alternative though more damaging to the character and integrity of the officials than even the first, would not assist the respondent in resisting the charge, because it was he who, with knowledge of the variation from their previous notings recommendations, deliberately accepted the same and made arrangements for financing the purchases of these 100 trucks, though in March 1957 he had kept the orders for the purchase of as few as six TMB vehicles in abeyance for lack of funds. Therefore, having regard to the several factors I have listed earlier, I would hold that the first alternative is that which is established.

(3) The rapidity with which the proposal made on 26th October is finalised and the financial hurdles which were stated to have led to

the keeping in abeyance of the order for 6 TMB vehicles in February 1957 were got over by the respondent calling for a meeting at his residence at which the Finance Secretary was present, and the manner in which on the verbal directions of the respondent an order was placed on 9th November, 1957 for 100 vehicles.

(4) The manner in which the 100 vehicles originally proposed are increased to 103 as set out in Allegation 22 which will be dealt with when considering the charge arising out of that allegation.

(5) The circumstances attendant on the manner in which the delivery of the Heavy Duty vehicles was arranged for—all of which form a subject-matter of Allegation 22 and which will be dealt with in connection with that charge.

5-51. In view of these facts which are wholly irreconcilable with the explanation if any offered by the respondent, I have no hesitation in holding that the case of the Government in respect of this matter is made out and that the note (Document 37) had been directed to be prepared recommending the purchase that it did, by the respondent and that the respondent's version that it was the act of the officer who worked out the requirements of the Department according to the best of his ability and that he did no more than accept the recommendations of a technical nature as regards the relative advantages of the different types of vehicles, cannot be accepted.

5-52. I, therefore, hold that the charge as set out in paragraph (b) of Allegation 16 is clearly made out.

Paragraph (c) of ALLEGATION 16.

5-53. The charge contained in paragraph (c) consists of two parts—

- (a) The increase in the number of TMB vehicles ordered from 100 to 120 ; and
- (b) payment of Rs. 33 lakhs to Fairdeal Motors against supplies which were delivered much later.

While dealing with paragraphs (a) and (b) of Allegation 16, reference has been made to the order for 100 TMB vehicles by a telegram dated 9th November, 1957 which was later confirmed in writing (vide Documents 35 and 36) and how this was increased to 103 by the addition of three more Heavy Duty vehicles by a proposal agreed to by the respondent (vide Documents 38 and 39). Subsequently by Document 49 (letter No. 5735/PD dated 30th January, 1958) a further 10 TMB vehicles were ordered. All these 10 were bus chassis and they were required to be supplied immediately and in one batch. They were to be part of the original order for 100 and more vehicles. The files do not show any proposal or the technical justification for the fresh order, but as no vehicle could be purchased except on the orders of the Minister in charge and the respondent occupied that office then, it is clear that this order was placed with the approval of the respondent. Two months later on 13th March, 1958 an order was placed for 8 more bus chassis vide Document 50. The files disclose that these bus chassis were ordered for the requirement of the Police Department and a copy of this order was forwarded to the Inspector General of Police for his information. In this it is stated that he had verbally mentioned the need for these vehicles and so they were being ordered, so that before the end

of the financial year 121 vehicles (103+10+8) had been ordered from TELCOs. In answer to my query as to whether he was challenging the need or propriety of the purchase of these 20 extra vehicles, Mr. Khambata learned counsel for the Government stated that his complaint was directed not much to the ordering of these extra vehicles as to the advance of Rs. 33 lakhs which was made to Fairdeal Motors.

5-54. The dates and amounts of these payments totalling Rs. 33,29,788.34 made to Messrs. Fairdeal Motors, the details of which are set out in paragraph 35 of the statement of the case, are not disputed by Bashir Ahmed. He states in his reply—

“The Government Transport Department paid advance funds to TELCOs either directly or through this respondent's firm as was done with respect to every other firm dealing in automobiles. This respondent is not aware as to whether payment of such advances is contrary to rules and makes no admission with respect to same. The respondent states that such advances were invariably made in respect of all the purchases made from Government Transport in so far as this respondent is aware..... It has been and is practice of the TELCOs and of other manufacturers to authorise despatch and delivery only after receiving remittances well in advance of the delivery”.

And then he denies that he or anyone else on his behalf approached the respondent in respect of the payment of the advance. As regards the respondent himself, his answer is contained in paragraph 47 of his statement and the relevant portion reads—

“The respondent has no knowledge of the contents thereof as the same was a matter completely within the province of the Transport Controller. The respondent has no knowledge as to whether the advance was made to Fairdeal Motors or whether such advances if made were contrary to any rules”.

5-55. The delivery schedule which was stipulated in the order in writing for the first batch of 100 vehicles (Document 36) and which was amended in the first week of December 1957 required the company to deliver before the end of November 40 vehicles, 20 more before the end of December 1957, a further 20 before the end of January 1958 and the balance of 23 before the end of February 1958. This order (Document 36) *stipulated that the cost of the chassis would be remitted within two weeks after their delivery at Jamshedpur*, the Government undertaking to arrange to drive away of these vehicles as soon as they were ready for collection. This delivery schedule was not adhered to by the company. The actual dates of delivery and the number delivered on each occasion were—

On 27-12-1957	.. 40 vehicles
.. 11-3-1958	20 ..
.. 11-4-1958	.. 20 ..
.. 15-5-1958	.. 3 ..
.. 24-7-1958	.. 8 ..
.. 20-8-1958	.. 8 ..
.. 22-8-1958	.. 4 ..
.. 27-10-1958	.. 5 ..
.. 11-11-1958	.. 14 ..

The payment of Rs. 11,82,612.00 for the first 40 vehicles which were delivered on 27-12-1957 was made on 6-12-1957. The next batch of 40 vehicles were delivered half on 11-3-1958 and the other half on 11-4-1958. For this a payment in advance of Rs. 10,35,482.00 was made on 7th February, 1958 to Fairdeal Motors. We have next the delivery of 3, 8 and 8 vehicles between 15th May, 1958 and 20th August, 1958 making a total of 19 vehicles. A sum of Rs. 5,12,032.60 was paid to Fairdeal Motors on 28th March, 1958 as for the price of 20 vehicles. The balance of the vehicles were delivered on 22-8-1958, 27-10-1958 and 11-11-1958 as seen earlier. For these 22 vehicles Rs. 3,49,660.94 was paid on 18th March, 1958 and Rs. 2,50,000.00 on 28th March, 1958. The payments are fully borne out by the documents evidencing the payments included in the bunch of bank vouchers forming part of Document 46 and are not disputed.

5- 56. Apart from the question of these payments being contrary to the rules, these payments were not required to be made under the terms of the contract between the Government and the TELCOs. Under the order (Document 36) which was accepted by TELCOs they had to be paid only within 2 weeks after delivery of the vehicles. The object, therefore, of making these payments to Fairdeal Motors was not to comply with any conditions of the contract between the Government and TELCOs, but could only have been for the purpose of placing Fairdeals in funds just at a time when this new business was coming into existence. No doubt Bashir Ahmed says that payments in advance were the usual terms upon which the automobile dealers accepted orders for sale or made supplies, but he has not given any instances of such a practice, nor does he assert the existence of any agreement or understanding between him and the Government by which the latter were required to make payments in advance. Besides of course he has no comment to make regarding the condition as to payment stipulated by the Government with TELCOs when they ordered the vehicles, directly from them, which certainly bound him, as their agent. The payments were, thus not called for by any agreement and were, therefore, favours shown to Bashir Ahmed, besides being made notwithstanding a specific stipulation against advance payments with TELCOs.

5- 57. Therefore, very much argument is not needed to establish that this payment of over Rs. 33 lakhs in advance within about 3 months after the order, though the last of the vehicles were delivered 8 months later, was highly irregular and uncalled for and its object could not have been anything else than to effect the transfer of State funds to Bashir Ahmed for the latter's use even though it be for a temporary period.

5- 58. The next question that has to be considered arises from the defence of the respondent that the payment of the advance was a matter with which he was not concerned, but it was for the Transport Commissioner who attended to these details. Of course, there is no order on the file by which he directed these irregular payments, but there are a few matters to which reference must be made. In the first place under the Cabinet order 122-C of 1950 dated 24th January, 1950 which is

Document 45 and whose terms I have already extracted, the financial powers of Government in the Transport Department were vested in the Minister incharge (paragraph 3) and under paragraph 8 the Transport Controller had just an imprest of Rs. 2 lakhs on expending which he could recoupe himself with the approval of the Minister incharge. If any more funds were required, it could only be on the orders of the Minister. Apart from this, we have the fact that the respondent was exercising control over the financial aspect of these purchases for we find in document 24 that on 14th March, 1957 he directed the purchase of TMB vehicles to be kept in abeyance for lack of funds. Again Document 39 shows that there was a conference at his residence at which the Finance Secretary, among others, was present and at which the question of finance for the purchase of these 103 vehicles was discussed and decisions were taken. In the face of this legal position and these indications, I do not believe the respondent when he says that the matter was left entirely to the Transport Commissioner to make such advances as he liked even to the extent of Rs. 33 lakhs without the same being brought to his notice and obtaining his approval. The rapidity with which these advances were made before the end of the financial year is another factor which I cannot fail to take into account. Nor do I think it possible to believe that the Transport Commissioner would have taken the responsibility of making an advance of such a huge sum of over Rs. 33 lakhs in variation of a contract with TELCOs under which the payments would not have been due till months later without the express directions of the respondent. In this connection it is necessary to advert to one matter on which the respondent lays stress, time and again and that is that in cases where he passed any verbal orders the officers had taken care to have the same reduced to writing and get it confirmed and that in the absence of any record to show a direction by him, it must be assumed that he gave none. The respondent's claim in this regard is wholly unjustified. No doubt there are instances where we have verbal orders which are subsequently confirmed in writing but from this it is not possible to assume that he has passed no verbal orders which he has not confirmed subsequently. There are several instances of verbal orders which have not been reduced to writing which are to be found in notings made by officers. I would point out merely by way of illustration, Documents 17 and 18 in Allegation 32 and the several documents to which I have referred in Allegation 37. There are several other instances which I have mentioned elsewhere in this report, for example in discussing allegation 10, 19 to refer only to a few. I should hasten to add that these two are only illustrative and not exhaustive and I have not thought it worthwhile to compile an exhaustive list.

5-59. I consider that the circumstances in which this advance is made are such as to leave no room for doubt that the same must have been made at the instance of or with the approval of the respondent. In view of the fact that this payment was irregular, uncalled for and merely consisted in transferring State funds for the benefit of his son and other relations, I have no hesitation in holding that the charge formulated in paragraph (c) of Allegation 16 is made out.

5-60. Paragraph (d) is not really a charge but attempts evaluating the benefit derived by Bakshi Bashir Ahmed and the other members of

his family by the misconduct alleged in paragraphs (a), (b) and (c), while paragraph (e) merely emphasises that it was as a result of misconduct and by abuse of the respondent's official position that this benefit was secured.

5-61. What now remains to be done in regard to this allegation is as regards the evaluation of the pecuniary advantage obtained by the members of the family of the respondent by reason of the obtaining of the agency for TELCOs for the Kashmir area together with the order for the vehicles and the irregular advance. It will be noticed that in paragraph (d) of Allegation 16 the Government had calculated that a sum of about Rs. 20 lakhs had accrued by way of commission to Fairdeal Motors by the sale of 1289 vehicles between 1957 and 1964, but this was admittedly the gross amount of commission which the firm received and from that had necessarily to be deducted the amount of expenses which Fairdeal Motors had to incur for earning this commission. I, therefore, pointed out to learned counsel for the Government that the financial advantage which accrued by the obtaining of this agency and the attendant order for the vehicles could not be taken to be the gross amount of the commission but had to be worked out on the basis of the net profit which the concern earned after it was formed. Learned counsel agreed and thereafter placed before me a different method of evaluating the pecuniary benefit arising out of the misconduct charged in Allegation 16(a), (b) and (c). The income-tax records of Feroze and Co. for the years 1957 to 1960 have been called for and produced and they show separately the profits earned out of Fairdeal Motors. The assessment year of Feroze & Co. is the calendar year and from October 1957 when Fairdeal Motors was started to December 1957, to the end of the accounting year, the profit as determined by the Income-Tax Officer from Fairdeal Motors was Rs. 47,966.55. During 1958 which is a whole year the profit rose to Rs. 1,99,546.01; during 1959 it was Rs. 1,50,354.89 during 1960 Rs. 1,16,984.08. After the dissolution of Feroze & Co. as and from 31st December, 1960 and subsequent to the period when Fairdeal Motors was allotted to Bashir Ahmed to be run by him with such partners as he chose, we do not have the income-tax returns of that firm. The assessments, I was told, had not been completed. Learned counsel for the Government, therefore, have proceeded upon the average of the preceding period, namely, Rs. 1,50,000 as the probable profit for the subsequent years 1961, 1962 and 1963. The total profit for the period 1957 to 1963 would come to Rs. 9,64,851. As the business which was secured to Bashir Ahmed was a continuing one, the Government estimated the value of this running business on the basis of a purchase value of five years' profit (*i.e.* Rs. 7,50,000.00) which I consider is not unreasonable. Adding it therefore to Rs. 9,64,851 we get a total of Rs. 17,14,851 and Mr. Khambata submitted that this would be the minimum figure at which the financial advantage obtained by Bashir Ahmed could be valued. It will be noticed that in arriving at this figure no account has been taken of the financial advantage accruing from this irregular advance of Rs. 33 lakhs because obviously it is subsumed and reflected in the profits of the year in which the advance was made. I consider this estimate reasonable and accept it.

6.1 The case of the Government is that in order further to improve the profit of the firm of Fairdeal Motors, Srinagar in which Bakshi Bashir Ahmed primarily and the other members of the family were interested, the respondent directed the placing of an order for 14 Heavy Duty T. M. B. vehicle chassis (7½ Tonnes) of the type known as L.325/46 from Fairdeal Motors, Srinagar. It is stated that these vehicles which were imported or manufactured by TELCOs had no ready market and had to be pushed through with difficulty in order to find a purchaser. It may be mentioned that TELCOs themselves stopped the assembling or manufacture of this type after 1958 so that they were in the market only between 1956-1958. As an encouragement to their dealers to induce them to effect sales of this model, TELCO offered them ten conventional type chassis of Tata Mercedes Benz trucks, which were in great demand and so could be readily sold, for each Heavy Duty vehicle for which they placed an order. Besides other inducements were also offered like special rebates etc. It is the case of the Government that without there being any need for the Government to indent for any heavy duty vehicle, the Transport Commissioner at the instance of the respondent, placed an order for 14 of these vehicles in order to enable the newly started Fairdeal Motors, Srinagar to obtain as many as 140 conventional type vehicles which had a ready market besides a cash remission of Rs. 2,000 per heavy duty vehicle, making on the latter account alone a profit of Rs. 28,000.

6.2 At first 11 vehicles of this heavy duty type were included in an order placed with TELCOs and later three more were added, making a total of 14 and these were taken delivery of directly from Fairdeal Motors.

6.3 The charge in respect of this matter is contained in allegation 22 which reads—

"Bakshi Ghulam Mohammad obtained pecuniary advantage for his son and relatives in as much as he gave orders in 1957 for an unwarranted purchase of 14 numbers of heavy Tata Mercedes Benz (L 325/46) chassis for the J&K Transport Department from M/S Fairdeal Motors, Srinagar, a concern owned and run by his son Bakshi Bashir and other relatives. He thereby facilitated the sale of this type of vehicles, which had no market in the State, and thereby also enabled M/S Fairdeal Motors to obtain 140 conventional type of chassis which were very much in demand, and which the principals were supplying at the rate of 10 per each L 325/46 Chassis lifted by their dealers".

6.4 The sting in the allegation consists of two parts —

(1) That the heavy duty trucks were really not needed and that the technical officials of the Department were

induced to make notings putting forward non-existent advantages of this model. The cost of these vehicles was more than that of the conventional type, and hence by ordering them the State really stood to lose. These trucks had no ready market and it was by reason of this feature that the TELCOs offered the special inducements referred to earlier to place orders for this type of vehicle.

(2) The other feature on which reliance is placed is that these vehicles could not be used on the Jammu-Srinagar road because under the rules the maximum load that could be carried was much less than the load which these heavy seven-tonners could carry.

6.5 Here, as in other cases, there are affidavits filed by the officers of the Transport Department in which it is stated that the notings originated as a result of the directions of the respondent. I do not propose to take any notice of these statements of fact as evidence against the respondent and would proceed to deal with the charge against him only on the basis of the documentary evidence.

6.6 The case of the Government as explained in the statement of the case runs:

PARAGRAPH 2. "During October 1957 Bakshi Ghulam Mohammad who was then the Prime Minister and the Transport Minister, directed the Transport Controller Shri S. M. Aga to place an order for the purchase of 100 TMB vehicles verbal directions were given to include heavy type L.325/46 Mercedes vehicles in the said order. . . . " and 11 vehicles were included.

PARAGRAPH 7. "The original order. . . . was increased to 103 by increasing the 11 heavy vehicles L.325/46 model to 14 under the directions of Bakshi Ghulam Mohammad as Transport Minister".

PARAGRAPH 15. "That the price of the heavy vehicle L.325/46 was about Rs. 10,000/- more than the price of the conventional L.312/42 model. The heavier chassis had a further disadvantage of not being capable of plying on the Jammu-Srinagar route due to its wider wheel base. Moreover, 325/46 Model is permitted to carry the same weight which is carried by L.312/42 Model on Jammu-Pathankot route."

PARAGRAPH 17. "That Fairdeal Motors by selling the heavy vehicles earned a special discount of Rs. 28,000/- and further became entitled to an allotment of 140 conventional 312/42 model vehicles on which the dealers commission alone comes to Rs.1,65,992/-"

6.7 In this case, in view of there being undisputed documentary evidence to prove that the vehicles were ordered on the directions of the respondent and certain other features to which I shall later refer, it would be necessary to refer even at this stage to the defence of the respondent before dealing with the documents. In his reply (paragraph 3) after denying that he gave any verbal directions to the Transport Controller for the purchase of 100 TMB vehicles or of any particular type of vehicle, he stated, "It appears that a proposal was put up to him by the Transport Controller to which (he) gave verbal approval as recorded by the Transport Controller. This was also confirmed in writing".

6.8 In paragraph 5 he denies that he gave any directions either for increasing the number of vehicles or of having indicated any particular type of vehicles or that he directed the Transport Controller to take delivery of these vehicles from Fairdeal Motors. In paragraph 6 he asserts that the relevant Files in the possession of the Government would indicate that the procurement of vehicles from any particular source was a matter for the Transport Controller and that he never gave any directions to him in that regard, not having any knowledge of the technicalities involved in the different types of vehicles or their suitability for a particular purpose. He says that he relied on the recommendation of the departmental officials and that he was entitled to rely on them.

6.9 Notice was also given to Bakshi Bashir Ahmed under Rule 5 (1) (a) who has filed a reply, but as this does not very much add to the merits of the defence it is unnecessary to refer it.

6.10 I shall now proceed to deal with the documents on which reliance has been placed by Government in support of the charge contained in this allegation. That the TELCOs offered special terms for the purchase of this model L.325/46 7½ tonner vehicles is clear from the terms of Document 1 which is a letter dated 20th August, 1957 addressed to Messrs. National Garage proprietor C.L. Gulati and Sons Private Ltd, Jammu. In this letter they say after setting out their special terms for the purchase of these heavy duty vehicles, "We will have no objection to the dealers fixing up the selling price to the customer after providing for themselves a margin of about Rs 1,100/- per chassis". And lastly, they say, "you will observe from the above that very attractive terms are offered for the L.325/46 model. Will you please put in your best efforts to secure maximum possible orders for the L.325/46 model and let us know your requirements for delivery during the next two months". There is another letter, also addressed by TELCOs to the National Garage dated 5th September 1957 (Document 2) which shows how anxious TELCOs were to dispose of these heavy duty vehicles and how reluctant their agents were to order them since obviously these did not

find a ready market. Document 3 is another letter also from TELCOs to the National Garage dated 19th October, 1957 in which they say, "we are glad to state that our decision to release the L 312/42 model chassis in the ratio of 10:1 of the L 325/46 model has received an overwhelming response from our dealers." Then after explaining the advantages of purchasing these heavy duty vehicles, the company adds 'We may further state in this connection that the special rebate of Rs.2000/- per chassis announced for a minimum of 8 L.325/46 chassis collected in October 1957 will not be extended after the 31st October, 1957". It was, therefore, suggested that the addressee should take delivery of the vehicles by November or December 1957 if he was to qualify for the special rebate of Rs.2,000/- per vehicle. Document 4 is a letter from the National Garage to a Police Officer who was in charge of the investigation with reference to the matters which are the subject of the present inquiry. They were answering questions as regards the market position of the L 325/46 model vehicles in 1957 and they said, that the supplies of these vehicles were stopped early in 1958 as the market prospects were very discouraging. This is confirmed by what Bashir Ahmed himself has stated in his reply. To sum up the position, these heavy duty vehicles appear to have come into the market in the later part of 1956 and finding the market not responsive, they were withdrawn in the beginning of 1958. The company offered several inducement to their agents who ordered these vehicles which took the form of special rebates of Rs 2000/- per vehicle plus an allotment of ten conventional vehicles, which admittedly possessed a ready market, for each such vehicle which was ordered.

6.11 Now we come to the order for these vehicles by the State Government from Fairdeal Motors. On 26th October, 1957 the Parts Manager prepared a note (Document 6) setting out the fleet position of the long carriers with a view to assess the needs of the Department. After classifying the vehicles under their various makes he pointed out that there was a total of 348 vehicles in their fleet. Out of them 80 Chevrolet, 18 Bedford and 7 Commers were said to need replacement as their further operation was uneconomical, they being too old. Thereafter he made a calculation of the total amount of freight that would have to be carried between Pathankot and Jammu and between Jammu and Srinagar. He suggested that the time had come for increasing the payloads permitted to be carried by the several types of vehicles and calculating on the basis that the TMB 7½ tonner should be permitted to carry 200 maunds. on the Jammu Pathankot road, arrived at the conclusion that if there were heavy duty trucks which would transport 200 maunds at 12 trips for 10 months, this would ease the traffic position, and finally he added that the addition of the 7½ tonnes model 325/46 may be obtained for running on the Jammu-Pathankot route, and that the introduction of this type would enable the Department to compare the performance of these heavy chassis with the recently purchased Leyland Heavy Duty

chassis under similar operational conditions. He therefore proposed that the Department might go in for 86 TMB L 312/42 model vehicles, 3 TMB chassis of LP 312/42 and 11 TMB 7½ tonner truck chassis L.325/46 model, making a total of 100. (There is, however, a correction here (in Document 6) in manuscript raising the total to 103 to which reference will be made later). Immediately on receipt of this note the Transport Controller accepted the recommendation and sent a telegram on the 9th November, 1957 (Document 35 in Allegation 16) ordering 100 TMB vehicles which was confirmed by a formal letter dated 15th November, 1957 (Document 7) by which he placed in writing an order for 86 TMB conventional truck chassis, 3 TMB conventional passenger chassis and 11 Heavy Duty 7½ tonner truck chassis model L. 325/46. A delivery schedule was given and these 11 Heavy Duty Vehicles were to be supplied before the end of November 1957. In this order the Parts Manager who signed it on behalf of the Transport Controller stated that he would arrange to drive away these units from TELCOs works as soon as they were ready for collection. But even before this letter (Document 7) was despatched, there had been a discussion over the telephone on the 13th November (vide Document 9) between the Transport Controller and TELCOs by which the number of heavy duty vehicles to be ordered was increased to 14. This was confirmed by a telegram from TELCOs to the Transport Controller which reads -

"Your telegram November 9th as discussed over telephone with Aga (Transport Controller) please increase order for L-325/46 to 14 instead 11 stop if necessary you may effect corresponding reduction other models

Telecosales"

On receipt, this was put up for formal orders as indicated by the endorsement on this telegram to the Transport Controller. The number of heavy duty vehicles to be ordered was then raised to 14 which is to be found in the manuscript correction in the Parts Manager's note (Document 6) by which 11 (Heavy Duty Vehicles) is corrected into 14 and the total of 100 is corrected into 103. Though the Sales Manager of TELCOs enquired if the number of conventional vehicles might be reduced, in view of the increase in the number of heavy duty vehicles ordered, this was not accepted but the total number of vehicles ordered was increased to 103. I shall have occasion to show later that there was no technical justification for this increase in the number of heavy duty vehicles and this increase in the total to 103. The telegram (Document 8) was replied to also by a telegram from the Transport Controller (Mr Aga) to the Sales Manager TELCOs (Document 9) in which he stated that he would accept 14 of the L. 325/46 type instead of 11, but that he would lift immediately eight from Fairdeal Motors from its ready stock and desired that six more might be kept ready for collection in November and the other units as phased in the formal order dated 15th November (i.e. Document 7). A confirmation was sent by post on the same day.

6-12 It would be noticed that this arrangement was a variation of what had been stated in Document 7 regarding the place of the taking of the delivery of the vehicles. This variation was apparently to enable Fairdeal Motors to get rid of the eight vehicles which they had apparently ordered and taken possession, of without having to find the market for them.

6-13 In reply to the telegram (Document 9) the Company sent a telegram which is Document 10. In this the Sales Manager insisted that the entirety of the 14 heavy duty vehicles would be supplied directly from the works at Jamshedpur and expressed their regret that they were unable to arrange release of L. 325/46 "from the ex-Fairdeal allocation". If the Company had stuck to this, the result would have been that though Fairdeal Motors would have obtained the 140 conventional vehicles they would still have had on their hands eight heavy duty trucks which they would have been at a loss to dispose of and the cost of these which came to nearly Rs. 3 lakhs would have handicapped them in their business. The Transport Controller was not prepared to accept the Company's refusal and sent a telegram (Document 11) asking the Sales Manager of TELCOs to ring him up from Bombay. What exactly transpired over the telephone is not in evidence, but what followed is a telegram from TELCOs to the Transport Controller (Document 12) by which they expressed their agreement to release six chassis L. 325/46 model from Fairdeal Motors's allocation. Finally all the 14 Heavy Duty vehicles were taken delivery of from Fairdeal Motors (vide Document 13 invoice of TELCOs for 14 Heavy Duty vehicles supplied to Fairdeal Motors). Thus, besides their obtaining the benefit of the supply of conventional vehicles in the ratio of 10:1 they were able to sell away eight of the vehicles in their hands without having to wait for purchasers, who might not turn up.

6-14 Now pausing here, it is necessary to refer to an incident in relation to this type of vehicle on which considerable reliance has been placed by learned counsel for the Government, in support of his submission that this order was placed primarily and even solely for the benefit of Bhkshi Bashir Ahmed. I have already referred to the correspondence that passed between the National Garage of Gulati & Sons Pvt. Ltd., and TELCOs. The National Garage were dealers of TELCO vehicles for the Jammu area, their agency for the Kashmir area having been terminated in October 1957. The National Garage had in their hands as early as from the beginning of 1957 one of these L. 325/46 model which, as the correspondence already referred to would show, they had been pressed to take by the manufacturers. They were evidently not able to find a market for this vehicle and on 4th April, 1957 they addressed a communication to the Transport Controller of Jammu & Kashmir Government offering to sell this

vehicle at a concessional price. In that letter which is Document 5, they stated that they understood that the Jammu & Kashmir Government were intending to purchase some heavy duty vehicles (this is correct vide Document 23 in Allegation 16 in which on 11th March, 1957 the respondent approved the proposal by which 12 Leyland trucks were actually ordered vide Document 25 in Allegation 16 on 1st May, 1957) for operation between Pathankot and Jammu, and as against the company's price of Rs. 36,080/- plus, of course, transport charges from Jamshedpur to Jammu, they offered ex-works at Jammu one L. 325/46 model for Rs. 35,000/-. At the time when this letter was received, there was, of course, no immediate proposal for the purchase of these TMB heavy model vehicles. Immediately on receipt of this, the Transport Controller marked it to the Parts Manager for his comments. The comments, however, are not on the file. It was put up again to the Transport Controller on 20th September, 1957 as is seen from a further endorsement on this letter. The point that was made by the learned counsel for the Government was that if there was really an urgency in having this type of vehicles for their operational fleet, delivery could have been taken of at least this one vehicle of Gulat, but that instead the Government chose to pay over a thousand rupees extra for obtaining vehicles from Fairdeal Motors, besides having to incur the expense of the drive away charges from Jamshedpur to Jammu. I consider there is substance in this submission.

6.15 Document 14 is of some importance in relation to this charge. It is a communication from the Transport Controller to the Secretary to Government, Finance Department and is dated 7th December, 1957. It states that he was sending a note which had been seen and approved by the Prime Minister at a meeting at his residence in November 1957 when the Secretary was present, for arranging funds for the purchase of these 103 vehicles and it adds, "meanwhile order for the chassis has been placed as approved by the Prime Minister". To this is appended the note of the Parts Manager which has been referred to as Document 6 with the corrections carried out, to make the total order for 103 vehicles with the heavy duty trucks 14 instead of 11. As there were not enough funds for making the purchase of these 103 vehicles— all of them, of course, through Fairdeal Motors—it was suggested that the Government should be approached to advance to the Transport Department sufficient funds for the purpose. This purchase was recommended on the basis of "TMB vehicles which were diesel driven were suitable for the type of operation and in view of the Government's policy of standardisation of the fleet for facility of maintenance and stocking of parts". In this connection, the technical justification for the purchase of 12 Leyland in May 1957, in which it was suggested that that would enable comparison of the performance of different makes may be recollected.

6.16 The total expenditure contemplated was in the region of over Rs. 20 lakhs for which provision was desired to be made. I am referring to Document 14 for the purpose of showing that these purchases of 103 vehicles with 14 of them being of the heavier type were made as approved by the respondent.

6.17 On this report the Home Secretary drew up a minute (Document 15) with a view to placing funds at the disposal of the Transport Controller, pointing out that the cost of these vehicles came to over Rs. 28 lakhs and as in the above note (Document 14) it had been stated that the order for 103 units had been made on the verbal orders given by the respondent, the Home Secretary suggested in paragraph 5 that the "P. M." before whom this note was to be placed might confirm the verbal orders given by him and over the margin the respondent has stated "yes" authenticating it with his initials.

6.18 There is one other document to which I must refer and that is a Document from the file of the Traffic Control Department (Document 17). It shows that up to 26th November, 1958 public carriers were permitted to carry up to a maximum of 100 maunds on Jammu-Srinagar route and only 160 maunds on the Jammu-Pathankot road. By an order of the Traffic Control authorities dated 21st November, 1958 the maximum payload was increased to 120 maunds on the Jammu-Srinagar route and 175 maunds on the Jammu-Pathankot route. It was only in March 1960 that the payload was increased on the Jammu-Pathankot road to 200 maunds, so that the calculations on the basis of which the purchase of these heavy duty vehicles was recommended—which proceeded on the footing that they would be entitled to carry 200 maunds—was without any foundation and appears to have been put forward merely for the purpose of suggesting the purchase of this type of vehicles. This might be compared with the economic justification for the proposal to purchase 12 Leyland vehicles dealt with in Allegation 16(a) supra.

6.19 Now I came to the most important and difficult question as to the part played by the respondent in the matter of effecting these purchases. To start with, the respondent himself admits that it was on his orders that the purchase was effected. In this connection it might be pertinent to point out that in accordance with paragraph 3 of the Government Order No. 122-C of 1950 dated 24th January, 1950 the powers of the Cabinet in regard to purchase of vehicles were vested in the Minister incharge of Transport and the respondent was on the relevant date not merely the Prime Minister, but also the Minister incharge of Transport. I am saying this because though there is in the files no direction by the respondent authorising the Transport Controller to place the order for the 100 vehicles in the first instance, it is not disputed that

the Transport Commissioner could not do so except on the orders of the respondent and besides it is admitted and the files bear this out as that the order for the 103 vehicles was placed on his direction. In this connection I would add that I attach considerable significance to the manner in which the number of heavy duty vehicles to be ordered was increased from 11 to 14 as a result of which the total number of vehicles ordered became 103 instead of remaining at 100 as suggested by TELCOs.

6.20 It is the case of the respondent that as a Minister in charge of the Transport as well as the Prime Minister, he merely acted on the advice of the technical officers of the Department, that he took no personal interest in the matter and that not being acquainted with the technical problems involved, he could and did merely proceed on what the departmental head suggested. On the other hand, the case of the Government is that it was on his initiative and at his suggestion that the departmental officers were directed to put up notes suggesting these purchases—purchases which were meant to assist Bakshi Bashir Ahmed who was the agent dealing in these vehicles, and to enable him to obtain substantial sums by way of commission on their purchases. In dealing with this imputation by the Government I am not, as already indicated, taking any notice of the statements in the affidavits filed by the several officers of the Transport Department regarding the respondent having spoken to them to have this purchase proposed and put through.

6.21 No. doubt, there is no direct indication in the files to point to the note (Document 6) having originated at the instance of the respondent, but in my opinion this does not conclude the matter and one has to have regard to the entire evidence and the cumulative effect of the various steps taken from stage to stage from the original proposal in Document 6 to the final implementation under which 14 vehicles were taken delivery of through Fairdeal Motors, to arrive at the conclusion as to whether the entire thing was or was not a device to benefit Bakshi Bashir Ahmed who, it is admitted, did derive considerable profit out of the transaction.

6.22 The circumstances I have in mind are—

(1) The timing of the proposal - Bakshi Bashir Ahmed was appointed as the sole dealer for TELCO vehicles for the province of Kashmir on 25th September, 1957 (vide Document 30 in Allegation 16) with a monopoly as regards the orders obtained from the Government of Jammu and Kashmir and Bakshi Bashir Ahmed accepted this appointment on 15th October, 1957 (vide Document 32 in Allegation 16). The note by the Parts Manager which must have taken some time to prepare, as is evident from the number and nature of the corrections in manuscript of the draft in the files (No.644/PD Parts I pages 3-10), was signed by

him on 26th October, 1957 and in this he proposed the purchase of 100 T. M. B. trucks, including 11 Heavy Duty vehicles (L.325/46 model) for maintaining the operational strength of the Transport fleet. Here I cannot but refer to the contents of Documents 23 and 24 in Allegation 16 dated 9th March and 14th March, 1957 respectively in which the respondent directed that the purchase of T. M. B. trucks which he had approved be kept in abeyance. I need only add that if the proposal contained in Document 6 had been mooted and approved of earlier than 15th October, 1957, the benefit of the Commission on their sales would have accrued not to Fairdeal Motors of Bakshi Bashir Ahmed but to the National Garages of which Gulati was the proprietor. I consider, therefore that this timing of the note (Document 6) immediately after the TELCO agency was obtained by Fairdeal Motors as of some significance.

(2) This timing is also of some relevance in view of the fact that on 19th October, 1957, the TELCOs had announced (vide Document 3) in addition to the concessions they were already offering to their dealer who picked up their L.325/46 models, a further cash discount of Rs. 2,000/- per chassis for a minimum of 8, besides the release to them of their conventional vehicles which were fast moving products in the ratio of 10 : 1 to every heavy duty vehicle ordered. The last date for the orders to be received by TELCOs according to this circular was the 31st October 1957 and it is common ground that this time limit was extended in the instant case and even though the order was placed on the 9th November, it is not disputed that Bakshi Bashir Ahmed got the benefit of this additional concession.

(3) Thirdly, even though in the original order all the 14 heavy duty vehicles were to be taken delivery of at Jamshedpur, as if it was a direct sale by the company through the agency of Fairdeal Motors, still efforts were made to vary this at the instance of the Transport Commissioner and to obtain at least eight of these vehicles from Fairdeal Motors, Srinagar. The point about the number 8 referred to in Document 9 arises from the fact that this was the minimum number of vehicles to be ordered on the terms of the company's offer to qualify for a special rebate of Rs. 2,000/- per chassis (vide paragraph 4 of Document 3). That was evidently the reason why the Transport Controller suggested that 8 should be taken from the stock in the hands of Fairdeal Motors. It is obvious that this variation was suggested to confer the advantage of paragraph 4 of Document 3 on Fairdeal Motors, Srinagar. As already indicated, I take it that on further negotiations and discussions the company who originally insisted upon not more than six being obtained from Fairdeal Motors, finally agreed to all the 14 being acquired through Fairdeal Motors.

In regard to this matter Bakshi Bashir Ahmad in his reply says that the Government did so because he had

the stock and they could have it earlier. If this statement is correct, he had lifted eight of these unsaleable Heavy Duty Vehicles within a month of his dealership, which could only be on the footing that he knew they were going to be ordered by Government.

However this may be, there was undoubtedly no urgency for the Government to obtain delivery of these vehicles which is the explanation offered by Bakshi Bashir Ahmed for the change in the manner of delivery. Firstly, having regard to the rule as to loads permitted, there was no difference between the delivery of one type of vehicle rather than another so far as the transport needs were concerned. Secondly, this is not reconcilable with the Transport Controller having on his hands from April, 1957 onwards the offer of Gulati to sell them a vehicle of this type for a price nearly Rs. 1,500/- less than that which they had to pay Fairdeal Motors, particularly as this offer had been put up before the Transport Controller in September 1957, as seen from the noting on Document 5. This offer was not accepted and there is nothing on the file to indicate, nor has the respondent of Bashir Ahmed offered any explanation, as to why the offer was not accepted. The only reason can be that if that offer was accepted, the National Garages and not Fairdeal Motors would have had the benefit of the release of 10 conventional vehicles and Fairdeal Motors would have been deprived of the additional commission of Rs. 2,000/- per vehicle.

(4) Document 14 which is a letter from the Transport Controller to the Finance Secretary dated 7th December, 1957 for making arrangements for the finance required for these purchases, indicates that the note (Document 6) as well as the financial proposals had been prepared at the instance of the respondent and that there had been a meeting at his residence in November 1957 at which the Finance Secretary was present when the note and the question of arranging for finance for this purchase were discussed and decisions taken. The letter says, "Meanwhile order for the chassis has been placed as approved by the Prime Minister". This approval was evidently oral, and hence in this letter confirmation in writing of this verbal order was sought.

(5) Intrinsic evidence offered by the note (Document 6) on the basis of which this order for the Heavy Duty vehicles was placed itself establishes that it was a manipulated note, as it proceeds deliberately on incorrect data.

(a) The Heavy Duty vehicles were according to the note to be in operation on the Jammu-Pathankot sector and were to be added to the fleet based on Jammu. The annual freight to

be transported by the Jammu based fleet is stated to be 12,62,000 maunds (the extra zero in Document 6 making the figure 12,62,0000 maunds is a typing error as is evident from a comparison with the draft which is in the file and has already been referred to). But the haulage capacity arrived at after including the proposed 11 Heavy Duty vehicles is 13,08,000, i. e. 46,000 maunds extra.

(b) The Parts Manager was aware that the permissible payload on the Jammu-Pathankot sector where these vehicles were to be used, was only 160 maunds irrespective of the capacity of the vehicle, as is evident from other parts of the note Document 6. The Registering authority which had the power after observing the statutory formalities prescribed by the Motor Vehicles Act, to increase this load, increased it to 175 by a notification issued only at the end of November, 1958 (vide Document 17)—more than a year after Document 6—and this was raised to 200 maunds only in the third week of March 1960 (ibid). But though the Parts Manager knew that the permissible load even for the Heavy Duty vehicles was at that date only 160 maunds, he worked out the outturn of these vehicles on the basis of their carrying 200 maunds. As 200 maunds load could not have been carried on that date, it would be obvious that the conventional vehicles which cost less to purchase and cheaper to maintain and run, would have been more economical with that permitted payload. It is not possible to envisage a Parts Manager of experience to have put forward a calculation of this sort for justifying the purchase of Heavy Duty vehicles knowing the payload which could be carried by each type of vehicle unless he had some special motive to do so. As the purchase of the Heavy Duty vehicles did confer considerable pecuniary advantage on Bakshi Bashir Ahmed and his concern Fairdeal Motors and as neither he nor the Transport Controller who approved this note, had personal interest to benefit Bakshi Bashir Ahmed, the inescapable conclusion is that the idea of such a note must have originated from the respondent with a view to justify the purchase of these vehicles and in order to benefit Fairdeal Motors.

(c) This aspect becomes clearer when one examines

carefully the changes which this note Document 6 underwent to justify the increase of the Heavy Duty vehicles, from 11 to 14. It would be recollected that though on the 9th November only 100 vehicles, including 11 Heavy Duty, were ordered, this was increased on 15th November, 1957 to 103 with 14 Heavy Duty, on the verbal orders of the respondent. There was no independent note justifying this increase, only the number of vehicles in the earlier note Document 6 was altered. These changes consisted merely in the alteration in manuscript of the typed matter as regards the number of vehicles required from 11 to 14 in some places and the total number of vehicles being raised from 100 to 103 in the last page where the financial implications were worked out, without any change in the body of the note dealing with the transport requirements. These changes with a few consequential alterations were typed out fair and this altered note formed the annexure to Document 14. When, however, we reach the annexure to Document 14 which is the corrected copy of Document 6, after the changes made increasing the number required from 11 to 14, we have this curious feature that the total load required to be carried by the Jammu based fleet still remained at 12,62,000 maunds while the total of the load which was to be carried by the 14 instead of the 11 Heavy Duty vehicles is brought up to 3,36,000 and the total haulage of the entire 103 vehicles to 13,80,000 maunds, thus providing for an idle capacity of 1,18,000 maunds, per annum. A comparison of Documents 6 and 14 discloses that except that 11 was corrected into 14 and the total number altered from 100 to 103, there was no change in the text, or in the reasons for the proposal. I have typed in parallel columns the matter in Document 6 and the same in the annexure to Document 14 which brings out the manipulation in the figures regarding the number of vehicles, and which clearly shows that the officer who prepared the document was aware of the artificial nature of the proposal he was putting forward. The increase in the number undoubtedly went to the benefit of Bashir Ahmed and as the officer had no personal interest in this clumsy manipulation, I consider that the inference is irresistible that he must have been directed to increase the number of vehicles to be ordered by some one interested in Bashir Ahmed.

Document 6

The annual freight transported from Pathankot to Jammu by the fleet based at Jammu is 12,62,0000 maunds and this haulage will require 53 Heavy duty conventional units as under:-

30 Bedfords and 15 Commer trucks will transport with 140 maunds permissible load at 12 trips for 10 months each
 $= 45 \times 140 \times 12 \times 10 =$
 7,56,000 maunds.

12 Leyland Commer Trucks will transport with 200 maunds load at 12 trips for 10 months each
 $= 12 \times 200 \times 12 \times 10 =$
 2,88,000 maunds

11 Heavy duty Trucks will transport with 200 maunds load at 12 trips for 10 months each
 $= 11 \times 200 \times 12 \times 10 =$
 2,64,000 maunds

Total
 $= 13,08,000$ maunds

"This means 11 new Heavy Duty Trucks shall have to be obtained in replacement of 25 old Units to be disposed of which will ensure freight haulage of about 2,62,000 maunds (mistyped for 12,62,000) maunds and corrected in manuscript into 13,08,000) a year and also provide Traffic and Workshop reserves".

Annexure to Document 14

The annual freight transported from Pathankot to Jammu by the fleet based at Jammu is 12,52,0000 maunds and this haulage will require 56 Heavy duty conventional units as under:-

30 Bedfords and 15 Commer trucks will transport with 140 maunds permissible load at 12 trips for 10 months each
 $= 45 \times 140 \times 12 \times 10 =$
 7,56,000 maunds.

12 Leyland Commer trucks will transport with 200 maunds load at 12 trips for 10 months each
 $= 12 \times 200 \times 12 \times 10 =$
 2,88,000 maunds

14 Heavy duty Trucks will transport with 200 maunds load at 12 trips for 10 months each
 $= 14 \times 200 \times 12 \times 10 =$
 $= 3,36,000$ maunds

Total
 $= 13,80,000$ maunds

"This means 14 new Heavy Duty Trucks shall have to be obtained in replacement of 25 old Units to be disposed of which will ensure freight haulage of about 13,80,000 maunds, a year and also provide Traffic and Workshop reserves".

"From above it is evident that we require 94 Load Carriers (83 chassis L. 312/42 of 5 tons and 11 chassis L. 325/46 of 7½ tons) in replacement of 105 trucks proposed for disposal and addition of 6 buses to meet on rush of traffic on city and District routes".

Phasing of purchases

	L. 312/42	L. 325/46	
November, 1957	23	11 'corrected into 14 manuscript LP 312/42	
December, 1957	20	1	
January, 1958	20	1	
February, 1958	23	1	
	<u>86</u>	<u>14 (corrected into 17 in manuscript)</u>	

(86+14 (corrected into 17 in manuscript)=100
(corrected into 103 in manuscript)

"From above it is evident that we require 94 Load Carriers (83 chassis L. 312/42 of 5 tons and 11 chassis L. 325/46 of 7½ tons) in replacement of 105 trucks proposed for disposal and addition of 6 buses to meet on rush of traffic on city and District routes".

It is evident that the author of the note lost track of the changes he had to make and forgot to put 97 instead of 94 which he copied from Document 6.

Phasing of purchases

	L. 312/42	L. 325/46	
November, 1957	23	14 LP 312/42	
December, 1957	20	1	
January, 1958	20	1	
February, 1958	23	1	
	<u>86</u>	<u>17</u>	

(86 + 17
= 103)

6.23 The cumulative effect of these features leads me to the inescapable conclusion that the note (Document 6) is artificial and is based on deliberately incorrect data and that it was further manipulated in Document 14 to justify the increase from 11 to 14, and could not have been prepared by the officials on their own initiative, but that they came into existence at the instance of some one who was interested in helping Fairdeal Motors to obtain financial advantages. This points irresistably to the respondent having had a hand in having this note prepared to assist his son. I am, therefore, satisfied that the charge as formulated in Allegation 22 is established. I find that by reason of this abuse of power, Bashir Ahmed benefited to the extent of Rs. 23,000 -which is the extra concession he got, as also by the commission he earned on the 140 conventional chassis he was admittedly permitted to lift as a result of this purchase, but as these amounts have been taken into account in computing the financial advantages gained by the abuse charged in Allegation 16, it need not be considered here.

7.1 Besides Fairdeal Motors, Srinagar there were quite a number of other concerns started by the several members of the family between 1957 and 1961 but these are of minor significance. Of these it is sufficient to refer to two or three just to show the diverse fields in which they engaged themselves and the range of their operations. Thus, Abdul Majid started in July 1959 a firm by name Fairdeal Motors, Indore having secured an agency for Ashok Leyland vehicles for the State of Madhya Pradesh. This was also a subsidiary, of the family concern of Feroze & Co. and the firm included among its partners not merely several members of the family viz., himself, his brother Ghulam Nabi and his two sons, Shama Mir, Yasmin Bakshi, wife of Bashir Ahmed, Aisha Begum sister of the respondent but also Mr. & Mrs. Bedi who were partners with him in Jay Kay Automobiles Jammu and Srinagar. In October 1959 Abdul Majid on his own statement (vide his reply to Allegation 14) entered into a partnership with Abdul Gani Bhat in the name of Messrs Fairdeal Builders, the deed of partnership being stated to have been drawn up on 28th October, 1959. Incidentally it may be mentioned that it was Abdul Ghani Bhat who was employed by the respondent for the construction of his own houses as well as for several Government buildings.

7.2 The members of the family appear to have been very affluent during the period 1958-60 as seen from the fact that even assuming the income-tax assessment figures were correct and they were not under-assessed, Bashir Ahmad was assessed to an income of Rs. 30,300 odd during the assessment year 1958-59 and Rs. 27,633 during 1959-60. This was on the basis of the 10% profits in Feroze & Co. and his share in Kashmir Motors. For the same period 1958-59 and 1959-60, Ghulam Nabi who had besides his own forest contracts, is seen to have been assessed on an income of Rs. 40,000 odd and Rs. 67,000 odd during these two years.

7.3 Abdul Majid also was equally affluent and in his case the income which he derived from the two theatres-Regal and Amrish-which he purchased in 1950-51, must have contributed not a little to his wealth. Now in regard to these two theatres I have already stated that they were two out of three theatres in the city for Srinagar at the time of their purchase. Seeing the scope for a profitable business there were others who desired to enter the field and open new cinemas. It is the case of the Government that the attempts of these newcomers were frustrated and that the respondent by abusing his power managed to ensure that no new theatres were licensed for the exhibition of cinema shows and thus secured a virtual monopoly for Abdul Majid in his cinema line. This forms the subject of Allegation 21 which reads as follows:—

"Out of the three Cinema houses at Srinagar, two were acquired in 1950 by Bakshi Ghulam Mohammad's brother Abdul Majid, and thereafter to eliminate competition no new Cinema was allowed to operate in Srinagar. In this manner the official position of Bakshi Ghulam Mohammed was abused and exploited for his brother's benefit."

7.4 It would be seen that the first sentence consists of two parts - (1) That the respondent's brother acquired in 1950 two of the three cinema houses then running at Srinagar and (2) that in order to eliminate any competition with these cinemas, new cinemas were prevented from operating. The effect of the second part is summed up in the second sentence which constitutes the gravamen of the charge and attributes this elimination of competition to the conscious action or inaction of the respondent.

7.5 That Abdul Majid acquired in 1950 two of the three cinema houses then running in Srinagar is not in dispute (vide Document 1 purchase of Regal and Amrish for Rs 1,50,000/-). The matter in controversy is, therefore, confined to the second part set out above. Though the notification does not specify the particular cinema houses which were prevented from operating, so that they would not compete with the theatres of Abdul Majid, the statement of the case filed on behalf of the Government names two cinema houses as the ones in regard to which the charge contained in the allegation is laid. These were the Regina, which was built in 1945-4 and the Jai Hind Talkies, which was constructed in or about 1946-47.

7.6 Taking Regina first, it was stated that after the building was constructed to be run as a Cinema House in 1945-46, a licence under the relevant law could have been applied for only in 1947, but that owing to the raids by Pakistan in that year and the disturbed conditions in the city following it for some time, no application was made till

1949. The case in regard to this cinema was briefly this. The owner Bhai Anant Singh made an application to run a Cinema in this building, but the respondent saw to it that this licence was refused, and that in order to put an end to all competition, the building was acquired for the Transport Department even though the same was wholly unsuited for the purpose, and needed extensive alteration and additions in order to adopt it to the purpose for which the acquisition was made. The property was acquired by the Government for the Transport Department for Rs. 1,10,000/- by a sale deed on 7th January, 1953 (Document 8) and extensive alterations were thereafter made at a cost of nearly Rs. 65,000/- to make it fit for the purposes of that Department (Document 12 dated 4th March, 1953).

7.7 There are, however, certain matters to be mentioned which are relevant for the consideration of the charge. In the first place, the application for the licence is not on record, nor of course the file which would have disclosed the notings regarding the result of any enquiries, nor have we any means of ascertaining why the licence was refused which was by a Cabinet resolution dated 22nd October, 1952 (Document 2) passed with Sheikh Mohammad Abdullah presiding as Prime Minister (the respondent being then the Deputy Prime Minister). The Department's memorandum by which the subject was placed on the agenda would have given a picture of the pros and cons together with the reasons advanced for the rejection of the application, is also not available. Nor have we any means for ascertaining whether the owner of the building was in a position to or eager or really desirous of running it as a cinema having regard to the finances needed to equip it with the furniture and fittings needed to run a cinema house. I am saying this, because the deed of sale (Document 8) recites that the property sold as well as certain other property, were under mortgage to the Jammu and Kashmir Bank, which had filed a suit against the vendor in the High Court and had obtained a consent decree on the 28th July, 1952 under which a sum of Rs. 86,511/2/- was due and owing to the Bank on the date of the sale.

7.8 It is further apparent that the property had been under mortgage to the Bank from 1947 onwards and interest was being charged at 6% per annum with quarterly rests on Rs. 40,000/- and later when the limit was enhanced, interest @ 6% with monthly rests was charged on the enhanced limit. In the face of these circumstances, I put it to Mr. Khambata, whether he could contend that Anant Singh was in a position to run the Cinema and whether he could have seriously pressed his application for a licence and whether or not the purchase by the Government at that stage with a mortgage decree against him, would not have been a godsend to him and an escape from ruin. Learned counsel frankly conceded that he could not press this part of the case and that he would confine himself to the case of Jai Hind Talkies to which I shall immediately proceed.

7.9 As stated earlier, this building was constructed in 1946-47. It was constructed in accordance with the municipal regulations, the permission therefor having been issued towards the end of 1945. No application was however made immediately for the issue of a licence under the Cinematograph Act 1939 (1933 A.D.) it is stated for the reason that there were some disputes between the joint owners of the building. It is not necessary to ascertain the truth as regards this matter, and it is sufficient to proceed to the next stage when we find that Bakshi Abdul Majid the brother of the respondent made an application on 22nd November, 1949 for the issue of a licence in his favour to exhibit cinema films in the theatre (Document 14). In this application he stated that he had taken the cinema hall on lease - (a statement which is now admitted to be inaccurate as according to him in the reply he has filed the lease was to come into effect only if the licence was obtained) and that he proposed to run the business in the name of "Shalimar Pictures". We find that on the same day the District Magistrate forwarded a copy of this application to the Deputy Inspector General of Police, Srinagar for his remarks (page 42 of File 90 (2002) of D. M. Office Kashmir regarding construction of cinema hall). The Deputy Inspector General of Police sent it down to the Station House Officer for a report and that officer reported that there was no objection. The Superintendent of Police endorsing the view of the Station House Officer forwarded the report to the Deputy Inspector General (page 43 of *ibid* dated 14th April, 1950).

7.10 Nothing further was however done in pursuance of this report, and the case of Abdul Majid is that he dropped the idea, as he was told that it was not the policy of the Government to grant any more licences for cinemas though there is nothing on the record in the several files to support this statement. I do not consider it necessary to decide between the rival versions as to the precise reasons which led to Abdul Majid dropping out of the scene, but evidently after he purchased the two other theatres Regal and Anrish in December, 1950, he was not presumably interested in other theatres. What, however, we find is that on 18th September 1950 Gouri, one of the partowners of the building made an application to the District Magistrate for the issue of a licence and in doing so he enclosed the endorsement by the Deputy Inspector General of Police on Abdul Majid's application, in support. In view of the Deputy Inspector General's report, there ought not have been need for any further enquiry or report from the Police officials, but we have an endorsement by the District Magistrate dated 6th November, 1950 on the application reading, "These papers may be kept pending for the present" vide page 50 of the file, *ibid*). The reasons for this order, and why the papers were directed to be kept pending are rather obscure, and learned counsel naturally suggested that some inference might be drawn from the proximity of this date to that on which Abdul Majid purchased the two cinema houses, coupled with the admitted quarrels between Abdul Majid and the other proprietors of the

Jai Hind. But the suspicion adverted to is not in my opinion well-founded, seeing that it was not suggested that the then District Magistrate had any interest in Abdul Majid, nor was it the Government's case that the respondent exerted any pressure on the District Magistrate. Indeed the notification proceeds to attribute abuse of power only to prevent competition with the two cinema houses purchased by Abdul Majid in December 1950 and this must, therefore, relate to some action after the purchase.

7.11 This completes the first stage of the matter. The second stage starts with an application on 5th July, 1955 by Krishan Gopal, one of the owners of the building for a licence (vide document 15) In it after stating that the building had been constructed after permission obtained from the municipality in 1946, he pointed out that the building could not be utilised as a cinema due to the raids and the disturbed conditions that followed. No reference was made to the earlier applications but it proceeded to pray for the grant of a licence, after assuring the authority that all the statutory requirements would be carried out. On this application, the office put up a note saying that though under Section 4 of the Cinematograph Act the District Magistrate was the competent authority to grant the licence, still as a communication had been received from the Chief Secretary dated 14th January, 1955, by which such applications were required to be referred to him before the licence was granted, the concerned papers might be so referred. A suggestion was also made that the Deputy Inspector General of Police might be addressed for verifying whether the building was in order for the purpose. It is not clear from the file whether the District Magistrate took action on this application in terms of the office note, though it is not clear why the papers should have to be forwarded to the Chief Secretary who was nowhere in the picture, if one went by the Cinematograph Act (vide Section 4 of the Cinematograph Act) but evidently nothing was communicated to the applicant as to what was being done.

7.12 It is stated in the affidavit now filed by Surinder Singh Gauri, part owner of the theatre, that he along with his co-owners finding that no action was taken by the District Magistrate on his application approached the respondent with a fresh application dated 3rd November, 1956 and sought his intervention to have their prayer granted. This seems probable, since we find on 31st December, 1956 a communication from Mr. D. P. Dhar, then Deputy Home Minister, to the District Magistrate forwarding the application submitted to the respondent and informing him that he had been directed by the respondent to convey to him that "if there is no serious objection to the contrary the licence to run the cinema may kindly be granted". But still nothing was done in the office of the District Magistrate for nearly two years. The next step the applicants for the licence took, was to apply

for a certified copy of the order of the Deputy Home Minister (Document 17) but this was refused on the ground that it was official correspondence (Document 18 dated 26th August, 1958).

7.13 There was thereafter a change in the personnel of the District Magistrate, Mr. Mir Nasrullah (son-in-law of the respondent) taking over the office on 4th April. The applicants evidently considered that they would have more luck with the new incumbent, and filed a fresh application on 11th November, 1959 (Document 9) detailing the entire history of the case except as regards the applications made in 1949 and 1950. They made particular reference to their interviewing the respondent, the application to him dated 3rd November 1956, and the communication of Mr. Dhar dated 31st December, 1956. They explained that every requirement of the Cinematograph Act and the rules had been complied with, and that there could be no objection to the grant. It was received by Mr. Mir Nasrullah who forwarded it on the same day to the Judicial Clerk. What this Clerk did with it is not apparent from the file, but the fact remains that the application was not attended to. The applicants, thereafter wrote to the District Magistrate reminding him of their application. This was dealt with by the Judicial Clerk himself who noted on it on 6th February, 1960 "Office to report". The "office" however took no action on this reminder, and nothing seems to have been placed even before the Judicial Clerk. The result was that the applicants came up with another reminder to the District Magistrate (Document 21) on 2nd April, 1960. Even thereafter nothing happened to their application which remained unattended, unnoticed and, of course, undisposed of, in the office of the District Magistrate and there after in November 1961 proposals were made for the purchase by the Government of the cinema building and the purchase was effected, payment of the price in advance of sanction, being made to the proprietors.

7.14 That finishes the story of the infructuous applications for the grant of a licence, and how with the building being purchased by the Government any possibility of its being used for a cinema house came to an end. The case of the Government is, and that is the gravamen of the charges against the respondent, two-fold (1) That the respondent through his influence and particularly after his son-in-law Mr. Mir Nasrullah became the District Magistrate, saw to it that the licence was not granted, though the proprietors of the building satisfied all the requirements of the Cinematograph Act and were, therefore, entitled in law to the grant of the licence. It was said that he did this to ensure that Abdul Majid did not face any competition in regard to his two cinema houses. (2) That he finally eliminated even this possibility of competition by purchasing the property for the Transport Department of which he was the concerned Minister, though the building

was not required by the department and in fact was not used by it but by the Forest Department for dumping charcoal; the suggestion being that the owners of the building finding that they could not obtain a licence, though they had been at it for over six years, became disheartened and sought to cut their losses by effecting the sale which seemed to them to offer the only escape from ruin.

7.15 It will be convenient to deal with these two matters separately and I shall first take up the points made as regards the delay in the disposal of the application by the District Magistrate. It will be recalled that the first application by the proprietors which requires to be noticed is that which was made in July 1955. Learned counsel did not suggest that the District Magistrate who then dealt with it was influenced by the respondent to delay its disposal, though it is curious that notwithstanding the noting of the office on the application (Document 15 see supra), the papers do not seem to have been sent to the Chief Secretary and that when next an application was made in 1959, there is no noting regarding its having to be sent to the Chief Secretary. But after some interval after which according to the affidavit of Gauri, (the proprietor) - he approached the respondent, but was put off, there was another application presented to the respondent himself in 1956 which was forwarded to the District Magistrate by the Deputy Home Minister Mr. D. P. Dhar (vide Document 16 dated 31st December, 1956). If the direction of the respondent conveyed in this note really represented his real reactions, nothing could be said against the propriety of his conduct. It is indeed on this that he relies very strongly in his reply for his bonafides. It was, however, submitted by Mr. Khambata that this was a make-believe, a sort of cover to mask his real intentions. Support was sought for this inference from the circumstances that notwithstanding this "direction" the District Magistrate did not take up the petition for disposal for nearly three years and that it lay with him undisposed of till he was transferred in April 1959, while all the time, it is stated in the affidavit that the applicants were pressing him to pass orders on it, a statement which could be accepted as true. I do feel that the conduct of the District Magistrate does give rise to suspicion, but I am unable to put it higher. I do not consider the circumstances such as lead irresistably to the conclusion of interference from or direction by the respondent as the only explanation for this conduct of the District Magistrate. In any event I would give the benefit of doubt to the respondent and hold that the inference is not clearly made out.

7.16 It was really the next stage, in the history of these applications, i. e. after Mr. Mir Nasrullah took over as District Magistrate that Mr. Khambata stressed as unmistakably pointing to the hand of the respondent in thwarting attempts to get the licence. The point was made this way: Mr. Mir Nasrullah took over as District Magistrate on 4th April, 1959.

He is the son-in-law of the respondent and, therefore, interested in Abdul Majid. He received an application giving full details of the earlier history on 12th November, 1959. Though he marked it for his judicial clerk, he took no further notice of the application, did not care to see whether the clerk put up the file or not. He received two reminders regarding this application first in February 1960 and again in April 1960 (Documents 20 and 21) and yet took no notice of them and the application remained undisposed of till October-November 1961 when the property was purchased. His silence in the face of repeated reminders, for which the files offer no explanation, could have been due, it was said, to his personal interest in Abdul Majid coupled with the instructions of his father-in-law—the respondent.

7.17 In view of these submissions which opinted to some abnormal and deliberate inaction raising a prima facie case of dereliction of duty, I issued notice to Mir Nasrullah under Section 10(1) of the Act, affording him an opportunity to explain his conduct. He appeared in response to this notice and after reading out a prepared statement, was at his request sworn and gave evidence on oath. After he was questioned by me regarding the matters appearing against him, he was cross-examined by Mr. Khambata. Briefly stated his answer was as follows: He received the application (Document 19), but he did not go through it carefully but marked it to the judicial clerk. He did not thereafter make any enquiries regarding the matter. There was a disastrous flood in the Kashmir Valley in July 1959 and all his time and attention was devoted to the relief of people who had suffered by this calamity, and this was the reason why the application was not attended to. The file contains two reminders addressed to him, but he stated that the first in February 1960 was not brought to his notice at all having been received by the Judicial Clerk, who directed the office to report on it. The second reminder of April 1960 which bears no endorsement or nothing on it, he said was not placed before him either, though by that date he was comparatively free from the flood relief work. He then proceeded to add that the applicants came to him personally and pressed upon him to pass an order, when he examined the earlier records and found that between 1946-1948 there were several representations by the residents of the locality objecting to the grant of licence to run a cinema in the building. The objections were on various grounds—that a mosque was near the place and that worship therein would be disturbed, that a Muslim graveyard was nearby, besides that it was in the vicinity of a girls school. There had been an inspection of the locality by Mr. M. A. Sahmiri who was the District Magistrate in 1948, who left a note pointing out the undesirability of a cinema in that place. He said he felt impressed by these considerations and thereupon passed an order rejecting the application. It was, therefore, not correct, he stated to suggest that he passed no order on the pending petition. Questions were put

to him regarding other cinema houses of one of which "Shiraz" Ghulam Nabi was a part-owner for running which he had granted licences in 1962 but I am omitting this for consideration for the reasons firstly that they are not very relevant to the charges now under consideration and more than that because the facts in regard to Shiraz are not fully before me.

7.18 The witness claimed that he had "come out with a bold statement" regarding his having passed a definitive order rejecting the application, I do not agree with this characterisation of his conduct claiming courage for this statement or admission. As I pointed out to him, if this statement were true, it would undoubtedly be in his favour, as regards the imputations made against him, I am not, however, satisfied that this statement is true. In the first place, there is no trace of such an order on the file. The witness said that the order was in writing but he admitted that it was not communicated to the applicant in writing but was orally read out to him. From an order refusing the grant of a licence an appeal lay for Section 5(5) of the Cinematograph Act enacts—

"Any person aggrieved by the decision of a licensing authority refusing to grant a licence under this Act may, within such time as may be prescribed, appeal to the Government or to such officer as the Government may specify in this behalf and the Government or the officer, as the case may be, may make such order as it or he thinks fit".

Having regard to the earnestness with which the applicants were pursuing their application from 1959 at least it is impossible to believe that if they knew of the order, they would not have filed an appeal from it particularly seeing that at one stage the respondent himself had said something on their application which was by no means adverse to them. The witness stated that he did not know if the applicants made an application for a copy of the order but the file of course shows no such application. If the application had been refused to their knowledge I do not believe it possible for the applicants to have refrained from stating so in the affidavit they have filed. Besides, even in the reply which Abdul Majid has filed in answer to the allegation, there is no hint of the application having been disposed of by its rejection. In these circumstances, I do not accept as true the statement of Mr. Mir Nasrullah, that he passed an order on the application rejecting the application.

7.19 On this finding it follows that though the applicants orally brought to his notice the application and the reminders, he still took no action on the application for about a year and a half. That would not certainly be indicative of any degree of efficiency, but that is not what I am concerned

with. There are two aspects in which the matter has to be considered. (1) Was the delay, postponement or silence on the part of Mr. Mir Nasrullah deliberate in the sense of being motivated by personal considerations towards his father-in-law or Abdul Majid? (2) Whether the respondent was directly or indirectly responsible for this attitude on his part.

7.20 Notwithstanding that Mr. Khambata was given an opportunity to cross-examine Mr. Mir Nasrullah, he did not even remotely suggest to him that he was acting in the interest of Abdul Majid, nor that he was influenced by the respondent to act as he did. When, however, counsel proceeded to sum up his case as regards this allegation after adverting to the improbabilities in the story of Mr. Nasrullah having rejected the application, he charged him with deliberately failing to pass the orders in order to help Abdul Majid and that at the instance of the respondent. I, however, drew counsel's attention to his failure to make any such charge against the witness while under examination, and pointed out that the imputation if true, was one of the serious misconduct in the discharge of his official duty, and that I could not possibly accept the submission, without the witness being given an opportunity of rebutting it or explaining it — an opportunity he would have had if the suggestions were put to him by counsel. Undoubtedly the documents 19 to 21 if they stood unexplained might lead to an inference of the kind suggested by learned counsel, but I accept the explanation of Mr. Mir Nasrullah as regards them and about his being absorbed in flood relief work for some months after July 1959. I have only to add that there was no serious cross-examination as regards these points of his statement. What remains is merely an inference to be drawn from his inaction for 1½ years between April 1960 and October-November 1961 and it is as regards his failure to take any action during this period, which might legitimately give rise to suspicion, that I have stated that in absence of suggestions of the type indicated earlier being made to him, I am unable to hold (1) that Mr. Mir Nasrullah failed to take action in order to help Majid or, of course (2) that he did so at the instance of the respondent.

7.21 From this it follows that though there are circumstances which give rise to great suspicion that the delay in the disposal of the application for the licence could not have been in the normal course even in the most ill-managed of offices, and that there should have been some influence which brought about that result, and that this influence was in all probability that of the respondent, I am unable to hold that this is anything more than a suspicion. I, therefore, find that the Government have not been able to establish with certainty that the respondent managed to avoid the disposal of the application from 1955 to 1961.

7.22 That brings me to the second head of the case of the Government, viz. that whether or not the respondent's hand is seen in the application being kept pending up to 1961, he certainly put an end to all possibility of competition by purchasing the building for the Transport Department, a purchase wholly unnecessary from the Government point of view. The submission was that the evidence disclosed (vide for instance evidence of Mr. Nasrullah on oath) that the proprietors were posturing the District Magistrate as well as the respondent to have their application allowed and the respondent thought that the best way of avoiding this pressure and at the same time ensure absence of competition for Abdul Majid's theatres, was to purchase the property, the suggestion being that the proprietors got tired of waiting these long years, the money they had sunk in the building not having brought them any return for over a decade, and therefore readily gave in as the best means of avoiding further loss. In support of these submissions the Government relief on (1) the manner in which the proposal for the purchase was initiated, (2) the rapidity with which the transaction was concluded and the consideration paid, (3) the circumstance that the building was not at all needed for the ostensible purpose for which it was purchased, and (4) the use to which it was put later.

7.23 I consider that there is substance in regard to each one of these four points, and I shall state my conclusions as regards the respondent's part after dealing with the relevant facts. The first document in point of date relevant to the purchase is a letter from the Chief Engineer dated 21st November, 1961 (Document 23), addressed to Mr. S. K. Raina, Transport Controller, submitting a valuation for the Jai Hind Talkie and of an annexe to the Regina Talkies as orally directed by him. The Chief Engineer valued the Jai Hind Talkie buildings at Rs. 1, 15,000/-. The files disclose no earlier note regarding the need for the building by the Transport Department, but the idea of purchase starts abruptly with this verbal direction by Mr. S. K. Raina the Transport Controller whose part in putting through various schemes at the instance of the respondent for the benefit of the latter's son would be found in the discussion of some of the allegations concerned in the Transport group. It is clear from Document 23, that by that date, the sale had been agreed to, subject to the price being calculated by a valuation by the Chief Engineer. This is followed a week later by the execution of the sale deed for the amount mentioned, possession being taken on the same day (Document 24 dated 29th November, 1961). It was after the purchase was thus completed that the Home Department was informed and formal sanction of Government obtained. The letter to the Home Secretary is dated 1st December, 1961 (document 22). It read --

"In view of the rapid expansion of our Department we have been facing a good deal of difficulty on account

of lack of accommodation for our additional Workshops, offices, and parking yard etc. This state of affairs was brought to the notice of the Prime Minister also, from time to time. But no satisfactory lands or buildings which we could acquire for this purpose were available in the past.

Recently however, we were lucky to hear from the Hon'ble Prime Minister that suitable accommodation had been arranged for our Department. Accordingly the Chief Engineer P. W. D. was directed by the Prime Minister to evaluate the cost of all these buildings and lands attached thereto. After hearing from the Chief Engineer and as per orders of the Prime Minister the following three buildidgs, namely:

- | | | |
|---|---|---|
| | X | X |
| (b) Jai Hind Cinema Srinagar near Shutra Shahi Bagh Srinagar. | X | X |

have been purchased as per the costs fixed by the Chief Engineer P. W. D. of respective Provinces."

It proceeded to point out that no provision had been made in the budget for such a purchase, as the availability of "such good accommodation" was not foreseen. The Finance Department was, therefore, to be approached as desired by the respondent. Besides, it was stated that under the orders of the respondent, payments had already been made to the vendors and so the Financial Adviser to the Department was directed to submit detailed proposals in regard to this to the Government. The Government must have sanctioned the purchase *ex-post-facto*, though that paper is not before me.

7.24 Though it was stated in the Transport Controller's letter dated 1st December, 1961 that the department had been "*Pressed for lack of accommodation*" and that "luckily" they were able to purchase this property of which possession was taken on 29th November, 1961, it is asserted by the Government and this is not denied by the respondent that the property was not put to any use by the Transport or any other department till August, 1963, i. e., for over 1½ years, which would be strong proof that the urgent need for this building expatiated in Document 22 was untrue. On 7th August, 1963 the Chief Conservator of Forests addressed a letter to the Conservator South Circle intimating to him.

"The Prime Minister has been pleased to approve of the following sites for the location of Central Stores for firewood, charcoal and coal respectively;

1.

2. Jai Hind Cinema building and its compound... now in the possession of Transport Department, (for charcoal):

He was further pleased to direct that these two sites should be immediately taken over by the Forest Department from the concerned authorities and necessary steps taken to fence and improve the area so as to make them fit for the storage and protection of the firewood, charcoal and coal stocks."

These orders were issued by the respondent on 4th August, 1963 at his residence when the Transport Controller was also present. The Forest Department, it was stated, "will have to pay a reasonable rent to the Transport Department" and "that the rent will be fixed by the Prime Minister himself". In forwarding a copy of this communication to the Divisional Forest Officer, the Conservator of Forests, South Circle said, "Jai Hind Cinema building and its compound will be utilised for storage of charcoal and steam coal to be got from Jammu and Valley".

7.25 It was accordingly taken over by the Forest Department on 8th August, 1963 (vide Document 25).

7.26 The next document to which reference has to be made is a draft audit paragraph which the Accountant General communicated to the Transport Department for inclusion in the audit report (Document 26). In this he commented on the purchase *inter alia* of Jai Hindi Talkies, for "augmenting its office, workshop and parking yard accommodation" these words being taken from Mr. S K Raina's letter Document 22 dated 1st December, 1961, but the building not being put to any use so far (August 1963) which showed that there was no immediate necessity, and that thus Government money was improperly kept locked up. Though Document 25 is signed on 18th September, it looks probable that its contents were known earlier and that it was in view of the statement that the building had not been put to any use till August 1963 that extreme urgency was shown in putting it at the disposal of the Forest Department and possession being handed over within four days of the respondent's oral directions and within 24 hours of the Chief Conservator of Forest's letter to the Conservator.

7.27 The reply to the draft audit paragraph prepared by Mr. S K Raina is Document 27 dated 29th October, 1963, but it really offered no explanation. The reason adduced for the purchase was that to compete successfully with private bus owners, there was need to have a Government bus stand near where the private transporters had their stand, and that the area was low lying and had to be developed for the purpose which would have meant an additional expenditure of Rs. 1½ lakhs which they did not have, and it was therefore temporarily used by the Forest Department. Document

27 was a draft explanation which was forwarded to the Home Department for being sent on to the Accountant General. The lower officers of the Home Department had this to say regarding this explanation—

"The other objection by Audit is in regard to purchase of buildings known as Jai Hind Talkies, Annexe Regina Hotel and House No. 17, at Srinagar. The Jai Hind Talkies was purchased in 1961 allegedly for establishing an office of the Transport Depot. If the department could not utilise the building for the purpose for which is purchased it, the Audit objection is well based. The plea of keen competition put forth by the T. C. requires further elaboration in view of the fact that during the period that has intervened, the Department has constructed more buildings in busier portion of the city and has rented out this building to Forest Department after spending Rs. 1.15 lakhs on it".

(File HA-50/63 Home Department-Audit Section-p.13.)

But as evidently no better explanation could be thought of, the draft prepared by Mr. S. K. Raina (Document 22) was forwarded to the Accountant General.

7.28 The Accountant General was not satisfied and the hollowness of this explanation was brought out by him in his reply (Document 28 dated 1st February, 1964) when he referred to the fact (1) that there was no immediate need for the purchase as indeed was impliedly admitted in Document 27 and (2) the reference to competition with private bus operators was incorrect since the Government stand was already located in a central place more advantageous than the stand for private buses.

7.29 Now what is the inference to be drawn from this purchase which was unnecessary and uncalled for at that stage, and made without any demand by the Department, as disclosed by the files. That the respondent was the prime mover in this purchase, that he initiated it, got payments made in advance,

concluded the sale and obtained possession, even without Government sanction or budgetary provision therefore shows both interest as well as a feeling of urgency which cannot be accounted for by the requirement of the Department alone. That the building remained unused for over 1½ years and even thereafter was used for dumping charcoal shows the utter falsity of the suggested purpose of the purchase which is directly traced to the respondent. I cannot therefore dismiss as far fetched the submission of Mr. Khambata that this purchase which did entail a loss to the State exchequer was designed to put an end to the pressure which the proprietor of the building were putting on him and the District Magistrate to run a cinema. The fact that Abdul Majid would benefit from the elimination of this competition, could not be seriously disputed. If the theory that the purchase was an honest one designed to effectuate the purposes mentioned in Document 22 be rejected, as it must, it follows that the purchase could have been motivated only to help Abdul Majid. I have only to add that it was not suggested by any one—the Government or the respondent—that the respondent was interested in the proprietors and that he came to their rescue seeing the loss they were incurring.

7.30 The result is that I hold that the charge as laid in Allegation 21 is established and I find accordingly.

7.31 To sum up, I have found that there was no substance in the case of the Government as regards abuse of power of the respondent in the elimination of competition by the Regina Talkies. I have also found that the purchase of the Jai Hind Talkies which for ever put an end to competition to the two cinema houses of Abdul Majid was by reason of the abuse of the official position of the respondent.

7.32 It is, however, not possible to evaluate the financial advantage gained by Abdul Majid by reason of this abuse, though owing to absence of competition Abdul Majid must have and is seen to have had a very thriving business in running his Regal and Amrish. How much of this is attributable to absence of competition is, of course, any body's guess. The fact that the two cinema houses of Abdul Majid were burnt down by mob violence in December 1963-January 1964, has no bearing on this issue.

8. 1. I have stated that among the brothers of the respondent Ghulam Nabi interested himself in forest contracts which sometimes he took for his own sole benefit, and sometimes in the name of firms of which he was the principal partner. One of the names in which he did business and in which he filed a tender for a forest lease in January 1960 was Haji & Co. Haji being part of his own name. It was for a lease of compartments 4(b), 5 and 7 Jangalwar Block of the Chiralla Forest. The original tender was for Rs. 65,11,000 which being the highest was accepted by the Government. He however backed out of this lease and got lease of the same compartment in another name "J. K. Timber Traders" this for Rs. 52 lakhs odd. It is the case of the Government that this was made possible by reason of the abuse of power on the part of the respondent and that by reason of this abuse the Government incurred a loss of over Rs. 13 lakhs being the difference between the two bids. The subject-matter of this charge is in Allegation 30.

8. 2. According to Ghulam Nabi who has filed a reply in response to a notice issued to him under Rule 6(1) (a), Haji & Co. was a partnership composed of himself and one Gani Joo and it is stated that this partnership came into existence in the first week of January 1960 *i. e.* for taking up and working this lease but this partnership was apparently not in writing as no deed of partnership has been produced, but as the existence of this partnership is admitted by the Government in the statement of their case, no further investigation of this point is necessary.

8. 3. The facts regarding which there is no dispute are these: Government issued a tender notice for the lease of Compartments 4 (b), 5 and 7 Jangalwar Block of the Chiralla Forests, an advance notice on 19th November, 1959 and a regular tender notice on 12th December, 1959. It was to be a five year lease and the last date for the tender was the 6th of January, 1960 which was also the date when the tenders were to be opened. A number of tenders were received for the said lease and highest offer was that of Haji & Co. — the amount quoted being Rs. 65,11,000/11. The tender had been signed by Gani Joo and the initial security amount that had to be paid according to the terms of the tender *viz.* Rs. 40,000.00 had also been paid. In a list that was prepared on the 6th January, 1960 setting out the names of the various tenderers and which was signed by the tenderers present, one Abdul Ahad signed on behalf of Haji & Co. This tender was recommended by the Conservator of Forests to the Chief Conservator of Forests for being sent up to Government for acceptance and the latter officer in his turn recommended the acceptance of this tender by the Government. The proposal for accepting this tender was placed before the Council of Ministers on 14th January, 1960 and the Council having accepted it, a Government order was issued directing the acceptance. Haji & Co. were thereafter required to come over to the office of the Forest Department for signing the agreement and to deposit the balance of the security amount. They, however, refrained from doing so and an undated letter was forwarded to the Minister of Forests bearing the signature of Gani Joo in which it was stated that there had been a mistake in the amount of the price mentioned in the tender and that instead of Rs. 65,11,000.11 it should have been Rs. 56,11,111/11/ Gani Joo also complained that he had made the tender without proper inspection of the trees adding that

if the revised figure was not accepted the firm would not execute the agreement. This letter was forwarded to the Minister for Forests, Mr. Wani Sogami who passed an order on 3rd February, 1960 rejecting the contention of the firm and stating that unless the firm was prepared to accept the lease for the original amount for which they had tendered, the earnest money paid might be confiscated and that they be debarred from taking any further lease with the Department. Efforts by the Department to get the firm to sign the agreement were being pursued and meanwhile on the direction of the respondent, it was ordered that fresh tenders might be called for, for the lease of this Compartment. A re-tender notice was accordingly issued on 19th February, 1960 the last date for the tender being specified as 8th March, 1960 when the tenders were to be opened. On that date there was only one tender, that of J. K. Timber Traders which was signed by one Zaffar Hussain. It is admitted that in J. K. Timber Traders, Ghulam Nabi had a 50 per cent interest and that the rest of the 50 per cent was held by Gani Joo and his group. The amount for which they bid was Rs. 52 lakhs. This tender was accepted and Ghulam Nabi thus had the benefit of the lease which he had improperly rejected for a sum of over Rs. 13 lakhs less than the amount bid for by him in January, 1960.

8. 4. It is the case of the Government that this was made possible by the orders passed by the respondent at various stages and stress is laid in this connection on three matters : (1) That the calling for a retender was directed by the respondent, even before the repudiation of the original contract by Haji & Co. had become complete; (2) That the acceptance of the single tender of J.K. Timber Traders was contrary to the prevailing practice; and (3) permitting Ghulam Nabi to tender in another name and obtain a contract as a result of that tender, notwithstanding that there had been an order of the Forest Minister barring the highest tenderer on the first occasion from "any further lease with the Department as laid down in the tender notice" was illegal and improper. This is the subject-matter of Allegation 30 of the notification which reads as follows :-

"By the abuse and exploitation of the official position of Bakshi Ghulam Mohammad, his brother Bakshi Ghulam Nabi, ins pite of the fact that he had backed out from the forest lease of Chirala Forest for a sum of Rs. 65 lacs taken in the name of M/s Haji and Co., and should have been debarred from future contracts, was on the other hand given the lease for the same forest for Rs. 52 lacs in the name of a different firm, namely, J & K Timber Traders. This was also in violation of the normal rules and practice, in that the single tender of Bakshi Ghulam Nabi was accepted".

8. 5. I have stated in very general terms the facts as they transpired in regard as to which there is not much dispute and shall be referring to the documents for the details. But before doing so it would be convenient to refer to the statement in reply of both the respondent as well as of Ghulam Nabi for that would enable attention being concentrated on the points of controversy.

8. 6. In his reply in paragraph 6 the respondent denies that he verbally directed the issue of a notice for calling for fresh tenders and he disputes the correctness of the construction sought to be placed by Government in paragraph 13 of their statement of the case on certain documents in which there is a reference to such an order by him. I shall deal with this controversy in detail in its proper place.

In paragraph 8 he states that —

“though the ordinary policy of the Government was not to accept offers where only one single tender was received, it was not an invariable rule anddictated by the interests of the Department the rule could be departed from”.

He goes on to point out the circumstances of the present case and certain other cases in which there was a departure from this normal rule.

8. 7. Next in paragraph 10 he denies all knowledge about the constitution of J. K. Timber Traders and that consequently he could not be accused of conferring any favour on Ghulam Nabi.

8. 8. Finally, in paragraph 14 he states that even assuming that Haji & Co. was the same firm as J & K Timber Traders, there would be no contravention of the rules, as there were other instances where firms similarly constituted but bearing different names were permitted to re-tender, their re-tender being accepted and he gives an instance of this. The respondent adds that the system of registering forest contractors under which they had to intimate the names and identity of their partners came into force only on 18th September, 1962 and under the previous practice people might tender under different names and styles. He also states that on a proper construction of the relevant order of the Forest Minister, there was no blacklisting of the firm of Haji & Co. and that blacklisting of firms had never been resorted to in practice.

8. 9. Coming next to the reply of Ghulam Nabi, he states in paragraph 5 that the amount for which he put in his first tender viz. Rs. 65 lakhs odd was uncommercial and uneconomic and was done out of a mistake committed by Gani Joo. He proceeds next to point out that if he backed out of the agreement, the Government had no option but to direct a re-tender since they had already forfeited the earnest money and had blacklisted Haji & Co. In other words, the direction to re-tender was the only step which the Government could take in the circumstances and, therefore, there was nothing improper in their having done so.

8. 10. Admitting that Haji & Co. had been blacklisted, he says in paragraph 20 that J. K. Timber Traders was a new concern and that Haji & Co. had been dissolved before the lease was re-tendered. This, therefore, being a new partnership concern, the blacklisting of Haji & Co. would not prevent J. K. Timber Traders from tendering or obtaining a lease. That the amount for which the re-tender was made was less, as he says nothing peculiar and he points out several instances

in which on re-tendering a lesser amount was obtained by Government. He also points out an instance where an original tenderer whose tender has been accepted but who backed out, made a re-tender which was accepted, thus seeking to establish that there was no general practice of blacklisting of those who backed out of their agreements. I should add that he does not appear to dispute that on a proper construction of the order of the Forest Minister, the firm of Haji & Co. were debarred from taking further contracts from the Department.

8. 11. From the above it will be seen that the principal points in controversy on which the question of abuse of power would depend would be—(1) whether the respondent directed the calling of fresh tenders and if so was this at a time when the contract concluded by the acceptance of the first tender for Rs. 65 lakhs and odd by Haji & Co. was still in force. (2) The propriety of accepting a single tender; (3) Whether the firm of Haji & Co. was blacklisted for their improper conduct in backing out of their contract. (4) If the firm of Haji & Co. was blacklisted whether the officers of the Department and the respondent knew of the identity of the partners composing the firms Haji & Co. and J. K. Timber Traders, for if they knew that Ghulam Nabi was the principal partner in both it would be obvious that the blacklisting should have been given effect to and the acceptance of his tender would have been contrary to the directions of the Minister and the amount tendered being very much less than even Rs. 56 lakhs mentioned by him in his letter to the Minister for Forests, should have been rejected. Incidentally would have to be considered the point raised by the respondent that even if there was a blacklisting, this had no effect provided the name in which the tender was made was different.

8. 12. I shall now proceed to deal with the documents which have been relied upon in support of the case of the Government and while doing so also refer to the large number of documents and files relied on by the respondent, the production of which has been called for and which have been produced as a result of my direction.

8. 13. Document 1 is a marking list, showing the description of the trees, their girth etc. in the several forest leases for which were being offered. The advance tender notice is Document 2 and it, among others, states that tenders were being invited for compartments 4(b), 5 and 7 (Jangalwar Block) of the Chiralla forest for which an earnest money of Rs. 40,000 had to be deposited. The only portion of this document of some relevance is a paragraph by which the prospective tenders were advised to inspect the marking on spot well in advance to have an accurate idea of the quality of timber, nature of marking etc. so that there might be no difficulty in framing correct estimates well in time for submitting their tenders. The actual tender notice is Document 3 and as stated earlier this was to be a five year lease which was final—cum—thinning and the five year lease was for the period 1960 to 1964. Even in this tender notice the number of the standing and fallen trees—fit and unfit—was set out and their total volumes specified. The caution in the advance tender notice is repeated in Document 3 in its third paragraph wherein the tenderers were “earnestly advised to inspect the marking on spot”. Paragraph 7 of the tender notice required the tenderers

to offer a lumpsum and to state the amount offered both in figures as well as in words. Clause 11 of the tender notice penalised tenderers withdrawing their offer after the opening of the tender, the penalty being that the earnest money would be confiscated and the tenderer was liable to be blacklisted. In the case of the highest tenderer backing out, the difference between the highest tender and the tender at which the lease is finally sanctioned may be realised as an arrears of land revenue at the discretion of the Government. I must, however, here point out that notwithstanding this clause it has been conceded by learned counsel for the Government that the penalty here prescribed had never been put into operation and that in no case has the difference between the original amount tendered by a person who backed out and the amount obtained on re-tender been realised from the defaulter.

8. 14. As stated earlier, the firm of Haji & Co., Residency Road, Jammu submitted a tender for the five year lease of this compartment and the tender signed by Gani Joo on behalf of the firm is Document 4. In this Gani Joo has signed in English and the sum of Rs. 65,11,000/-11/- has been entered in figures as well as in words. A deposit receipt for Rs. 40,000 was enclosed as required by the notice calling for the tender. There were four tenders for this lease and Haji's was the highest (Document 5). When the tenders were opened and a list of the tenderers for the several leases was made out, a list was prepared (Document 6) of the tenderer for all the leases and Abdul Ahad has signed on behalf of Haji & Co. at No. 23 in this list.

8. 15. Haji & Co. being the highest tenderers, the Conservator of Forests Mr. Basu in whose presence these tenders were opened, forwarded a letter dated 8th January, 1960 (Document 7) to the Chief Conservator stating that in regard to the lease of this compartment four tenders were received and of them Haji's was the highest. "Being regular with reasonable and good offer, the same is recommended for necessary sanction". Learned counsel for the Government relied on this document for certain other matters which were mentioned in it. In view of the statement in the correspondence about the Rs. 65 lakhs being a mistake for Rs. 56 lakhs - a thing which is repeated in his reply by Ghulam Nabi, it was pointed out that there is a reference in Document 7 regarding a discussion which succeeded the opening of the tenders and correction slips issued to the tender notice being announced and a careful note being made by all those present. This was for the purpose of showing that there was no question of any mistake in the figures.

8. 16. Secondly, in regard to the credit worthiness, reputation and experience of the firm Haji & Co. it was pointed out that in the case of several of the tenderers comments were made by the Conservator, regarding their experience or financial soundness; but in the case of Haji & Co., the only comment was that which is extracted earlier. Thus "Motherland & Sons" was said to be "a new entrant into the field", another tenderer is referred to as "being a Pathankot timber dealer and working as forest lessee in the Punjab" (Harbilas Baldev Raj) in whose case a bank reference was being asked for, that in the case of Hill Forest Company that a bank reference was being asked for, in regard to the

firm of Bhagwandas Loknath Magotra & Co. he pointed out that it was "a local firm which had already a lease in the name of Bhagwandas Ishar Das". About United Timber Traders, Canal Road, Jammu he said: 'the concern is quite sound but if thought necessary bank references can be asked for', and bank references were also asked for in respect of Hardutt Sharma of Reasi. Now the submission was that the only reason why it was not thought necessary to call for a bank reference in the case of Haji & Co. was that the Conservator of Forests and other departmental officers knew the identity of the partners and the fact that it was a concern of Ghulam Nabi. But as, however, it is not stated even by Ghulam Nabi himself that the department were ignorant of his being a partner in the Haji & Co., the argument based on the reference to the firm in Document 7 appears to me to be superfluous.

8. 17. On receipt of this recommendation from the Conservator of Forests, the Chief Conservator of Forests drew up his memorandum (Document 8) to the Deputy Secretary (Forests) recommending to the Government the acceptance of this tender. In this note after pointing out that the offer of Rs. 65 lakhs odd particularly when compared to the second highest offer of Rs. 49,70,650/- was on the high side, he said—

"It is, however, a matter for considerable gratification *that a firm of long-standing with a clean record of efficiency and performance* has come for the first time for working in the Jammu Circle and the Department, therefore, *has no anxiety on that account..... They are experienced lessees* and it is therefore recommended that the lease be sanctioned in their favour at Rs. 65,11,000.11."

(I have underlined the passages referring to the soundness and experience of the firm, in view of the respondent's statement that the bid of Rs. 65 lakhs odd was erratic, and was due to the inexperience of the firm).

The Chief Conservator of Forests who said this was Mr. Firdaus, whose views on the reasonableness of these tenders seem to have undergone radical alteration to which I would have to advert when dealing with the charge in Allegation 31. This note fully bears out the submission of the Government that the constituents of Haji & Co. were well known to the Chief Conservator and the Forest Department.

8. 18. The other point on which Document 8 has some relevance is the statement of the Chief Conservator when dealing with the lease of Compartments 72 and 73 Dudu Range, Udhampur. Only one tender had been received for that lease and the amount of the tender was Rs. 8,11,999/- which for the timber involved was, according to the Chief Conservator of Forests, a very good rate. The Conservator of Forests, Jammu had recommended that notwithstanding the tender being single, it might be sanctioned on the ground that its re-sale might not fetch better results. The comment of the Chief Conservator of Forests on which reliance is placed might be set out in his own words—

"A question of policy is involved in this matter as the Government has generally *during the past two years* refused to sanction leases where only one tender has been received. In this case

also I feel that it would be better to invite fresh offers". (underlining mine).

8. 19. The matter went up to the Forest Secretariat and the letter of the Chief Conservator of Forests was placed before the Minister of State for Forests Mr. Sogami. He endorsed the recommendations of the Chief Conservator of Forests except as to one matter not relevant in the present context and directed the papers to be submitted to the Prime Minister for his orders. This was on 12th January, 1960. Thereafter the matter came before the Cabinet on 14th January, 1960 after the note of the Chief Conservator of Forests and of the Minister had been circulated. The Cabinet accepted the recommendation of the Chief Conservator as modified, but what is of relevance and on which stress was laid was the second paragraph of the Council decision (Document 10) which read—

"Groups Nos. II, VI and IX are ordered to be re-tendered because only one tender was received in respect of each of these Groups".

The Dudu Compartment was in VI.

8. 20. As a result of the acceptance by the Government of the Chief Conservator's recommendation the lease of the Jangalwara compartment in Chiralla Range was sanctioned in favour of Haji & Co. for a sum of Rs. 65,11,000/11/- (Document 11) by a Government order, and a communication in terms of the orders was issued to Messrs Haji & Co. on 21st January, 1960 (Document 12). The firm was directed to appear at the office of the Conservator within 15 days and pay a total sum of Rs. 36,052/- being the balance of the security amount before the 4th February, 1960. As no reply had been received from that firm within the time specified in Document 12, a reminder was issued on 10th February, 1960 (Document 13) by which the representative of the firm was required to attend the office of the conservator within three days, in default of which they were informed that action would be taken in terms of the tender notice. Though this letter was prepared in the office of the Conservator on 9th February, 1960, it was evidently despatched on the 10th as seen from the office copy which is Document 13. It was signed by some officer for the Conservator and was apparently seen by him on the 17th as seen from his endorsement in the letter signed and dated by him on 17th February, 1960.

8. 21. Document 12 (letter dated 21-1-60) had directed the tenderer to appear before the Conservator before the 4th February and on the 3rd they addressed an undated communication (Document 14) to the Minister of Forests in which they stated—

"Due to a mistake caused by hurry, Rupees 65,11,111/- have been written in place of Rupees 56,11,111/- in the tender form".

It will be noticed that this figure of Rs. 65,11,111/- is itself a mistake for Rs. 65,11,000/11/- which is the figure found in the tender form. (It is, therefore, evident that these figures were filled up haphazardly from

memory without reference to the copy of their tender which must have been in the possession of the firm). A request was, therefore, made that the tender might be accepted for the reduced figure adding that "we have, after careful inspection of the forest offered Rs. 56,11,111/- (for the lease)". Finally it wound up by saying that in the event of the request not being granted they refused to enter into any agreement. This was immediately placed before the Minister for Forests Mr. Sogami and he passed an order in which after dismissing the story of mistake on the part of the lessee as being without substance, he directed the Conservator to send for the firm and ascertain whether they were willing to take the lease unconditionally for the original amount. If they were not prepared, the order was that the earnest money be confiscated *"and he may be debarred from taking any further lease with the Department as laid down in the tender notice"*. In terms of the noting on Document 14, the Chief Conservator addressed a D.O. letter to the Conservator, Jammu on 4th February, 1960 by which he communicated to him the text of the Minister's orders. In view of the respondent's contention that there had really been no order by the Minister to blacklist the firm for their conduct in backing out of the concluded contract, in the face of the terms of the orders which I have underlined, I would extract that portion of the letter of the Chief Conservator dealing with this which clearly shows how the order was understood by the officers and that the interpretation sought to be put upon the Minister's orders by the respondent is without basis. The Chief Conservator said in his letter (Document 16)—

"Please send for the party and ascertain from them if they are willing to take the lease unconditionally on the offer of Rs. 65,11,111.00 made by them. If not, their earnest money be please confiscated and *further debarred from taking any further lease with the Department as laid down in the Tender Notice*",

He added that after receiving information from him, orders regarding the re-advertisement of the lease would be issued. On the 5th the Conservator of Forests wrote to Messrs Gani Joo Ahsan Joo and Messrs Haji & Co. requiring them to appear in his office that day between 12 noon and 2.00 P.M. When this note was taken to the addressees, the reply to it was endorsed on the original and was to the effect that both "Haji Sahib" as well as Gani Joo were away and that immediately they returned they would be informed. "Haji Sahib" was Haji Ghulam Nabi. As they did not turn up, a further reminder was issued by the Conservator on 8th February, 1960 (Document 18). In this the purpose for which they were required was mentioned and it was pointed out that if they were not prepared to accept the contract at the original figure of Rs. 65 lakhs odd, the Department would confiscate the earnest money and "you will further be debarred from taking any further lease with the Department as laid down in the Tender Notice."

8. 22. At about this date the firm Haji & Co. forwarded a copy of this letter to the Minister (Document 14) to the Chief Conservator of Forests, they also addressed a letter to the Conservator of Forests purporting to be in reply to Document 18. The letter to the Chief

Conservator of Forests which is undated was received by him apparently on or about the 16th February and in view of the orders passed already on the identical letter addressed to the Minister, he endorsed on it "File". This endorsement is dated 16th February, 1960. The letter to the Conservator of Forests is Document 35. Here an attempt was made to show that the figure originally entered must have been erroneous by contending that the volume of timber marked would be sufficient to indicate that there had been a mistake in the filling in of the amount of royalty. This letter was signed by Gani Joo who stated that the mistake had been caused because he was personally not acquainted with the English language. I have here to point that in the tender which was signed by Gani Joo in English, the amount of the bid was entered in words in English. The request made in the other letter being also repeated here, namely, that if the Department would permit him to alter the royalty to Rs. 56 lakhs odd he would execute the lease and would "work it standing competition with the other firms". In the event of the request not being acceded to, the Conservator was requested to refund the earnest money. The endorsement by the Conservator on this was that the previous correspondence might be put up to him.

8-23. Before, however, the prayers contained in Document 35 were finally disposed of, (they were disposed of in March-April 1960), a re-tender had been ordered of this lease, which could only have been on the basis, that the original tenderer had finally refused to abide by the contract.

8-24. The order by which the Chiralla lease was directed to be re-tendered is Document 19 dated 10th February, 1960. As considerable stress was laid by learned counsel for the Government on the contents of this document as establishing the part played by the respondent in this transaction, I will have to deal with it in some detail. To go back a little in compliance with the Cabinet order dated 15th January, 1960 (Document 11 ante) the sale of the six forest lots had been advertised for re-tendering. The tenders were opened on 30th January, 1960 by the Conservator of Forests. Compartment 84(b) of Udampur which was the first of the lots to be re-tendered had previously been tendered by Motherland & Sons whose tender had been accepted but who had backed out. In their case it is stated, that the earnest money was confiscated and the firm debarred from taking further leases from the Department. Another re-tender was in respect of group No. 7, Bhadarwah. The original tenderers K. K. & Co. whose tender had been accepted on the 6th January, 1960 had backed out on the ground that they had tendered without knowing the working conditions. Their earnest money was confiscated and they were debarred from further forest working. After these re-tenders were received, the Conservator of Forests submitted on 3rd February, 1960 his recommendations to the Government regarding the acceptance of the six leases which were the subject of re-tenders, in regard to four, tenders had been received and they were recommended by the Chief Conservator for sanction. In regard, however, to two lots—Compartment 63 Dudu and Compartments 72 and 73 Dudu—no tenders had been received. It was in regard to them that he recommended that there should be a further re-tender as there had to be. These recommendations were accepted

in their entirety, but in the order as drawn up as regards the compartments to be re-tendered, it was said—

"Comptts. 63 Dudu and Comptt. 72 and 73 Dudu would be retendered *along with the lease of comptt. 4, 5, 7 Jangalwar, Bhadarwah Divn.* (the last being the lot for which the tender of Haji & Co. had been accepted and which was still under correspondence and regarding which there had been no recommendation by the Chief Conservator) by issue of a short term notice."

This order was communicated by the Chief Conservator to the Conservator for necessary action and this is Document 19. There was a note following the text of the letter which reads :

"c.c. (Carbon copy) to Deputy General Secretary (Forests) for information in continuation of this office No. 1251/C dated 3-2-60 (the communication from the Chief Conservator to the Government regarding the result of the re-tendering of the six leases). The sanction has been conveyed by the Hon'ble Prime Minister today the 10th February 1960".

Now the question arises how this order for the re-tender of the Chiralla lease came to be included by the Chief Conservator of Forests in Document 19 and communicated to the Deputy Secretary, General Department as seen from the endorsement on the document. It is the case of the Government that as stated in Note 2 of Document 19 it was on the orders of the respondent passed verbally on the 10th February, 1960 that the re-tender was directed.

8-25. In dealing with this note of the Chief Conservator, the respondent states in paragraph 6 of his reply, that he gave no directions to the Chief Conservator as alleged and then his first complaint is that the letter of the Chief Conservator of Forests dated 3rd February, 1960 quoted in the order had not been produced. It has been produced in view of this comment and it shows that the Chief Conservator recommended an order for retender only in respect of the two leases for which no tenders had been received. Secondly, the respondent says that the note making a reference to his orders is "manipulated". It is difficult to understand what exactly is meant by this, unless the suggestion is that the second paragraph of the note extracted above has been introduced later with a view to these proceedings. But apart from the appearance of the original which shows that it was always there, the crucial portion referring to the orders of the respondent is to be found in the direction to the Conservator to direct a retender of the Chiralla lease, and this, respondent does not say, is a later addition. The suggestion of "manipulation" whatever it means, is without any basis.

8-26. Finally, he winds up by saying that even if he had directed the Chief Conservator of Forests to order a re-tendering, there was nothing improper in it because as the lessee had backed out, nothing more could be done than to direct a re-tender. The matter is no so simple or innocuous as is suggested, as I shall show when discussing the

effect of this order to re-advertise. He desires certain other records to be produced and they have been done and I shall be referring to some of them in dealing with the part played by the respondent in this direction to re-tender.

8-27. Though the Chief Conservator of Forests had addressed the Conservator as early as the 10th February Conveying to him the Government orders, the actual Government Order in relation to it was passed on the 26th February, 1960.

8-28. When one looks into the files and the sequence of events, the matter has proceeded this way. The letter of the Chief Conservator of Forests dated 3rd February, 1960 recommending readvertisement in regard to two leases of Motherland & Sons and K. K. & Co. in which the highest tenderers had backed out and suggesting the imposition of penalties on them, was placed before the Minister Mr. Sogami and he concurred in the recommendation of the Chief Conservator (vide File FST 38/59/JL page 93). This order was on the 5th February, 1960 and the paper was thereafter forwarded to the Finance Department for scrutiny (page 95). The Finance Department returned it on 10th February, 1960 with the remark that "severest possible penalty may be imposed on the lessees who have backed out unless this has already been done" (P. 96) and then in the original files we have Document 19 at page 97 with the second note (already extracted) in its place, i.e. dated 10th February, 1960. This recommendation of the Chief Conservator with the notings of the Minister and the Finance Department was placed before the Cabinet on 26th February, 1960 (vide page 100 which records the Cabinet decision) and the recommendation was accepted, but in the Cabinet decision as recorded, *there is no reference to the direction for re-sale of the Chiralla compartment*. When drafting the order to be issued in pursuance of the Cabinet decision (page 98 of the file) a doubt appears to have arisen as to whether it should be recited that the Cabinet decision was to confirm the action of the Prime Minister in sanctioning the leases and in ordering the re-tendering. Ultimately, however, this form was not adopted for the reason stated at page 98—

"The C.C.F. on the verbal instructions of the H.P.M. issued instructions to C.F.J..... wherein sanction to the leases was communicated".

and this is followed by a note by the Secretary—

"A simple sanction has to be issued. It need not be mentioned in the G.O. that the P.M.'s orders are being confirmed. The G.O. has to be issued on the basis of Council sanction. Please put up a revised G.O."

And the revised G.O. was put up and was issued. I might now point out what exactly this indicates. When the matter was put up to the Council the memorandum did not include any suggestion as to the re-tendering of the Chiralla lease. The Council when it passed the resolution on 26th February, 1960 did not accord sanction for this re-tendering. The re-tendering had been ordered by the respondent verbally to

the Chief Conservator of Forests and this order had been carried out. The Council resolution I should add was not passed at a meeting of the Cabinet but by circulation (page 103 of the file, *ibid*). A close examination of the file, therefore, reveals the following :—

(1) That no proposal was put up by the Chief Conservator of Forests for directing a re-tender of the Chiralla lease originally taken by Haji & Co. (Proposals in his letter dated 3-2-1960).

(2) As the memorandum of the Chief Conservator of Forests dated 3rd February, 1960 (C.C.F's 1251-C dated 3rd February, 1960) did not contain any recommendation in this regard, there was no noting by the Minister Mr. Sogani on it (vide page 95 of the file on 5th February, 1960). In the case of the other leases, in regard to which orders had been passed by the Minister, they had been sent to the Finance Department for scrutiny but this was not. The noting by the Finance Department was on 10th February, 1960. Immediately the file came back from the Finance Department the respondent is seen to have intervened and it was on his verbal instructions that the retendering of the Chiralla lease was ordered. The proposal in regard to this did not come up before the Cabinet when the proposal regarding the Chief Conservator's recommendations were taken up and so was not sanctioned by that body. In other words, the instructions to call for re-tender issued to the Conservator of Forests Jammu by the Chief Conservator of Forests were on the verbal orders of the respondent given to him on 10th February, 1960 and this was not put up before the Council nor was confirmation obtained from the Cabinet when all the other matters were circulated on 26th February, 1960.

82-9. I am here drawing attention not so much to the irregularity of this direction not having been confirmed by the Cabinet which itself is a matter, not by any means trivial, but as to why the respondent should have included this direction for re-tender on 10th February, 1960. Notwithstanding his denial, there is no doubt on the files that that was he who gave verbal instructions for this purpose, which were carried out. By 10th February, 1960 though the time originally fixed within which the party was directed to appear before the Conservator of Forests had expired, but by a reminder issued to him on 10th February, 1960 (Document 13) Haji & Co. had been given three days time from the date of the receipt of the letter to appear before the Conservator, sign the agreement and put through the original contract. In their letters addressed to the Minister as well as to the Chief Conservator of Forests, Haji & Co. had offered to take the contract for a sum of Rs. 56 lakhs odd. That offer or counter offer was still in the field. There is noting in the files to indicate that Haji & Co.'s letter dated 3rd February, 1960 to the Minister for Forests alleging mistake on their part in specifying the amount of the bid and refusing to take the lease except for Rs. 56 lakhs was ever placed before the respondent. The original letter was, as the files show, passed on to the Chief Conservator of Forests with the orders of the Forest Minister who in turn communicated the Minister's orders to the Conservator of Forests by Document 16 dated 4th February, 1960. In the circumstances the question arises as to the means by which or the manner in which, the respondent became aware of the unwillingness of

Haji & Co. to stand by their agreement. The respondent has no explanation to offer as to his source of information. The only explanation, therefore, can be that since the letter of Haji & Co. was not placed before him, he could have been apprised of it only by his brother Ghulam Nabi. If I am right in saying this, I can conceive of no other explanation, for the respondent does not say that the Chief Conservator told him about it for even if he had, he would also have told him about the correspondence with the firm, the rest of the respondent's conduct is understandable.

8. 30. The Minister Mr. Sogami had ordered that if the tenderers failed to stand by their original offer their security be forfeited and they be blacklisted. But these consequences were to follow only if they failed to comply and the time for the compliance with these directions had not expired by 10th February, 1960. If before that date the Government themselves put an end to the contract by calling for fresh tenders, there could be no question thereafter of Haji & Co. being treated as defaulter.

8.31. It is next necessary to refer to the manner in which this order of the Chief Conservator of Forests based on the verbal directions of the respondent was carried out. Immediately he got Document 19 the Conservator published a notice on 19th February, 1960 calling for tenders, for among others, the Chiralla lease of compartments 4(b), 5 and 7 Jangalwar (vide Document 20). The tenders had to be deposited in the office by the 8th March, 1960 and were to be opened by 2.00 P.M. that day. A firm under the name Messrs J. K. Timber Traders were the sole tenderers for this lease and the amount for which the tender was made was Rs. 52 lakhs (Document 21). It is admitted that J. K. Timber Traders was a firm composed of the partners of Haji & Co. with Ghulam Nabi as the principal partner. Its address was given as Residency Road, Jammu—the same as that of Haji & Co. It might be pointed out that though in the notice calling for tenders it was specifically mentioned that the tenderer had to write the amount of the tender both in figures as well as in words, in Document 21 it was only written in figures with the space after the words "in words" being left blank. It bore the signature on behalf of the tenderer of Zaffar Hussain and when the tenders were opened he signed the list which was then prepared as representing J. K. Timber Traders. On the 10th March, 1960 the Conservator of Forests submitted his report to the Chief Conservator containing his remarks and recommendations in regard to the several tenders received (Document 24). In regard to this tender of J. K. Timber Traders he narrated the history of the tenderers. After stating that Haji & Co. had been the highest tenderers on the first occasion having offered Rs. 65 lakhs, he stated that they had backed out finding it to be a very high offer and that this time J. K. Timber Traders had offered Rs. 52 lakhs and though the difference was very vast, he justified the acceptance of this tender on the ground that the nature and the value of the timber in the forests which had been marked would not justify a higher bid. He added—

"The first offer of Rs. 65 lakhs was nothing short of inexperience

and want of proper and thorough inspection and examination of the forests"

and based on this he recommended the acceptance of the present offer as decent and reasonable. It should, however, be pointed out that in Document 7 wherein the same Conservator Mr. Bassu had recommended the acceptance of the previous bid for Rs. 65 lakhs, he had stated that this is a "reasonable and good offer" and he recommended the same and when the matter went to the Chief Conservator of Forests he added that Haji & Co. were a firm of long standing with a clean record of efficiency and performance and were experienced lessees and so the lease might be sanctioned in their favour. The Chief Conservator on that occasion was Mr. Firduos about whose conduct in the affairs of the leases which are the subject of charges 29 and 31 (infra) I would have more to say.

8.32. One other point which learned counsel for the Government made in respect of this report of the Conservator I must not omit to mention. In two other cases he stated that the Department had tried to get the tenderers to increase their bid at least up to the previous highest bid. In this case this point attains some significance because by 10th March, 1960 there was in the office of Mr. Bassu Document 35 by which Haji & Co. had agreed to take the lease and work it for Rs. 56 lakhs odd. This letter had been received on 16th February, 1960 and was kept pending in this office. Learned Counsel for the Government, therefore, were justified in their submission that there must have been some reason which was prompting the Conservator of Forests to ignore this offer of Haji & Co. and proceed on the basis that the tender of J. K. Timber Traders should be accepted at Rs. 52 lakhs. That reason could only be that if he made a note in Document 24 about the existence of this offer for Rs. 4 lakhs more, it would be to the financial disadvantage of J. K. Timber Traders. The suggestion, therefore, was that whereas in other cases the Conservator of Forests was anxious to ensure that the Department obtained the maximum lease amount, in this case he deliberately made no mention of Document 35 and the possibility of a higher offer only because he knew the identity of the firm of J. K. Timber Traders. I shall have to revert to the conduct of the Conservator of Forests in dealing with Document 35, but I will take it up after completing the narration in regard to the acceptance of this tender. When the recommendation of the Conservator of Forests reached the Chief Conservator of Forests, he acted immediately and on the next day, 11th March, 1960 wrote Document 25 to the Deputy Secretary of the General Department (Forest Branch) suggesting the acceptance of the recommendation of the Conservator of Forests adding that he fully subscribed to what the Conservator of Forests had stated. He, therefore, requested that that "Government sanction in favour of the following highest tenderers be please secured and communicated". Among the so-called highest tenderers was the tender of J. K. Timber Traders who were the sole tenderers. Now in regard to the Chief Conservator also some remark as has just been made about the conduct of Mr. Bassu appears justified. He had received on 16th February, 1960 addressed to him personally a copy of what Haji & Co. had stated in Document 14 to the Minister, namely that they would accept the lease for Rs. 56 lakhs. He had communicated the decision of the Minister to the Conservator which was to send for the lessees and ascertain from them whether they would take the lease for

the original figure. He had not yet received any final reply from the Conservator of Forests because Document 35 which the latter had received had not been forwarded to him. The Chief Conservator, however, proceeded on the basis of recommending the acceptance of a single tender by the Government which could only have been on the basis that nothing more than Rs. 52 lakhs—the sum tendered—could have been obtained if the tender was rejected and a fresh tender called. Besides, he did not even draw the Government's attention to the fact that this was a single tender, though this fact was mentioned in Document 24, the letter of the Conservator which was enclosed along with Document 25. When Document 25 was received, the noting by the Deputy Secretary was that the previous tenderer Haji & Co. had backed out and in the retender the only one tender had been received from J. K. Timber Traders. He proceeded "The past practice has been to re-tender such leases. Council sanction in consultation with the Finance Department shall have to be obtained.... The policy of the Government is not to accept offers, however attractive these may be, where only one tender is received. In this case also we may recommend this lease being re-tendered. Finance Department will be consulted before Council sanction is applied for". When it went up to the Secretary he noted after pointing out that it was a single tender—

"It may have to be ascertained from the C.C.F. whether there is a likelihood of receiving a higher offer if fresh tenders are invited".

The papers then were forwarded to the Minister Mr. Sogami who without making any comment upon these notings stated—

"I agree with the recommendation of the Conservator of Forests and the Chief Conservator of Forests and recommend that all the three highest tenders may be accepted".

This was on 14th March 1960 and he marked it to the respondent. Meanwhile pending the formal sanction of the Council which was to meet on 16th March, 1960 but acting on the orders of the Minister Mr. Sogami, the Deputy Secretary directed the Conservator of Forests to get agreements executed by the lessees and work orders issued to them in anticipation of the sanction (Document 27 dated 14th March, 1960) and a copy of this was forwarded to the Conservator of Forests, Jammu marked 'Express' for immediate action (Document 28). On the 14th itself a formal agreement was entered into between J. K. Timber Traders Residency Road, Jammu and the Government by which in consideration of Rs. 52 lakhs the lease was effected in their favour of this compartment for 5 years, 1960 to 1964 (Document 29), though the formal order sanctioning the lease was not communicated to the lessees. The agreement purports to be dated 14th March, 1960 though clause 41 of the said agreement recites that the Government had received from the firm "the sum of Rs. 52,000 vide J&K Bank Ltd. Jammu FDR No. B 16390 dated 15-3-60, the receipt of which is hereby acknowledged" and for the

Government it is signed by Secretary to Government, Forest Department. Evidently they were quite in a hurry for finishing the entire transaction even before the Cabinet meeting and have the work order issued. I should also point out that the work order (Document 30) recites the receipt of Rs. 40,000/- by a deposit in a bank dated 8-3-60 and Rs. 12,000/- in cash which it is hard to square with the recital in the agreement itself. One other feature of the work order is that there is a clause there under which a sum which in the case of this lease came to Rs. 8,666/- had to be paid. This typed form was altered in manuscript to read "promise to pay within a month's time" and this work order is also signed by Mr. Bassu, the Conservator.

8.33. The order of the Cabinet which met on 16th March, 1960 is contained in Document 31. The subject is "re-advertisement of forest leases (1) Udampur compartment 63, (2) Compartment 72 and 73 Dudu, (3) Compartments 4(b), 5 and 7, Chiralla". In the case of the first two there was more than one tender and the highest was being recommended for acceptance though the highest amount of re-tender then received was lower than the original highest tender and the last one a case of a single tender. The decision of the Cabinet is worded thus :

"This case was introduced by the Minister of State for Forests in the Cabinet meeting. Secretary Forests was also present. After some it was ordered that the action already taken by the Minister of State for Forests be confirmed and his recommendation for sanction of leases be accepted."

8.34. Pausing here, I should refer to the application of Haji & Co. which had been pending with the Conservator Mr. Bassu from 16th February, 1960. As I stated earlier, he did not forward it immediately to the Chief Conservator. This he did only on 23rd March, 1960 i.e. more than a week after he had issued the work order to J. K. Timber Traders. Document 36 was his communication and in this he professed to deal with the letter of the Chief Conservator dated 4th February, 1960 by which action was directed to be taken against Haji & Co. After narrating the facts regarding the lease having been re-advertised and since sanctioned, in favour of J. K. Timber Traders "who had deposited the the security, signed the agreement and secured the work order", he drew attention to the fact that Haji & Co. had been asked to explain why they had backed out of their contract and a copy of the reply which is Document 35 was forwarded for perusal. After pointing out that the firm of Haji & Co. was "a novice in forest working and a new enterpriser and had, therefore, made an erratic offer", he recommended that "a lenient view" may be taken and that the earnest money might be directed to be refunded to the tenderer. On receipt of this the Chief Conservator of Forests addressed a D.O. letter marked 'confidential' to the Government in which he pointed out that in all other such cases earnest money had been forfeited and, therefore, suggested that the earlier order of the Minister might be carried out. The Minister's endorsement on this was that his original order would be carried out and the same was communicated to the Chief Conservator vide Document 39. Apparently the

Chief Conservator felt that having obtained the benefit of over Rs. 4 lakhs over what they themselves demanded, any recommendation by him for leniency would have come in for more adverse comment.

8.35. Regarding the acceptance of this re-tender it would be seen from the foregoing that two points arise and these were stressed by learned counsel for Government. (1) That notwithstanding the order of the Minister Mr. Scgami that Haji & Co. be black-listed and that order was communicated by the Chief Conservator to the Conservator by his letter dated 4th February, 1960 and this was not modified at any later stage, the tender of J. K. Timber Traders which was merely another name under which Bakhshi Ghulam Nabi operated was accepted, and (2) a single tender of J. K. Timber Traders was accepted contrary to the rules and this was done to benefit the firm knowing its identity.

8.36. Taking up the first point that Bakhshi Ghulam Nabi was a partner in both the concerns Haji & Co. and J. K. Timber Traders having a 50% share with Gani Joo figuring as partner in both is not disputed by him. As regard this however two points are raised—

- (a) That the officers and the Minister as well as the respondent were not aware of the composition of the new firm and particularly of the fact that Bakhshi Ghulam Nabi was the principal partner in J. K. Timber Traders.
- (b) A legal or technical contention raised by the respondent as well as by Bakhshi Ghulam Nabi that provided a tender is made in a new name, the identity of the tenderer would not matter and that the forest officers were bound to treat the new name as a different person.

8.37. In view of the admission of Ghulam Nabi about his interest in both the firms Haji & Co. and J.K. Timber Traders, it is not necessary to go into this in any great detail. I might, however, point out that though the partnership deed by which the firm of Haji & Co. was constituted is not in evidence—it is not even clear whether a formal deed was executed for the purpose, it is admitted that it was constituted by Ghulam Nabi and Gani Joo and it was Gani Joo had who signed the tender on behalf of Haji & Co. and when a notice was issued to the firm of Haji & Co. on 5th February, 1960 (Document 17), the endorsement by the employees of the firm shows that Haji Ghulam Nabi and Gani Joo were the two partners, for it was stated that they were away and hence could not appear before the Conservator. A copy of the partnership deed of J. K. Timber Traders has been filed by Government (registered on page 59 of the Register of Firms on 13th August, 1960) which shows that it was drawn up and executed on 7th April, 1960 though it was to have effect from the beginning of January 1960. Subsequently the other partners dropped out and thereafter a partnership deed was executed on the 20th March, 1961 between Ghulam Nabi, his two sons and his daughter-in-law (vide Document 44 in Allegation 1). This last deed recites that Ghulam Nabi had secured the forest lease now under discussion for a consideration of Rs. 52 lakhs under Government order dated 16th March, 1960 alongwith one Mohammad Abdullah of Bankot and

it adds that these two later joined Gani Joo and two others and executed a regular deed of partnership on 7th April, 1960 and that subsequently the other partners having dropped out Haji Ghulam Nabi became the sole proprietor and was taking in his two sons and daughter-in-law as his partners in this business. The retirement of the other partners is evidenced by Document 43 in this allegation which is the deed of dissolution. It is, therefore, clear that J. K. Timber Traders was virtually the name in which Haji Ghulam Nabi was conducting his business.

8. 38. I entertain no doubt, whatsoever, that the Conservator of Forests and the Chief Conservator of Forests knew about the composition of this firm. I have already pointed out that the Conservator Mr. Bassu had in forwarding tenders received by him, to the Chief Conservator has always added his remark about the experience or inexperience of the tenderers and as regards their financial position. Even Ghulam Nabi does not dispute that the officers knew about the composition of Haji & Co. and that he was virtually the proprietor of that concern. It is because of this that we have the remark of the Chief Conservator that the firm had done excellent work in the Kashmir Valley and their entry into the forest business in Jammu was, therefore, welcome.

8. 39. The fact that up to September, 1962 there was no rule requiring forest contractors to state in writing about the partners of the firm is not of any great significance because up to then, before recommending tenders for acceptance the officers of the Forest Department appear to have made inquiries and ascertained these details. A reference to the comments as regards several tenders to the experience or inexperience of particular individual contractors, the businesses which they were otherwise conducting, is sufficient evidence of this. Besides, inquiries were also being made about the financial status of these contractors. The rule by which the contractors were required to specify the nature of the partners obviated the need for these further enquiries and was, therefore, a measure of convenience. I, therefore, do not attach any great importance to this matter which is stressed by the respondent in his reply.

8. 40. When the firm of J. K. Timber Trades submitted a tender for Rs. 52 lakhs the Conservator Mr. Bassu when recommending the acceptance of this tender makes no reference to the firm being new, or inexperienced nor any reference to the financial position of the concern. I can draw no other inference from this feature than that he knew who the partners were and knowing that Ghulam Nabi was the principal partner in the firm, made no comment about it. Any comment by him about the composition of the firm would have led to the embarrassment of his having to say something regarding the order of the Minister passed on 3rd February, 1960 blacklisting the firm Haji & Co., which had been communicated to him by the Chief Conservator on 4th February, 1960. Besides, the Conservator who was as much aware as any other of the policy of the Government not to accept single tenders and knowing that the tender of Haji & Co. for Rs. 56 lakhs had not yet been finally disposed of, had forwarded this tender of J. K. Timber Traders for Rs. 52 lakhs, as a reasonable one for acceptance. I do not consider that it would be possible that he could have done this unless he knew the composition of J. K. Timber Traders.

8. 41. What I have stated as regards Mr. Bassu, the Conservator of Forests applies with even greater force to Mr. Firdous the Chief Conservator of Forests. It was he who had communicated the earlier order of Mr. Sogami blacklisting the firm in the event of their backing out of the contract and had obtained verbal orders from the respondent for the re-tendering even while the correspondence in regard to the first tender had not come to an end. In the face of his knowledge that there was an offer for Rs. 56 lakhs he could not have recommended the acceptance of a single tender for Rs. 52 lakhs as the highest that could have been obtained unless knowing the identity of the firm he intended to benefit them. I am, therefore, satisfied that both the Conservator and the Chief Conservator of Forests knew that Haji Ghulam Nabi was the principal partner if not the sole proprietor of J. K. Timber Traders and that re-tendering was by the same firm though in another name.

8. 42. When this recommendation went to the Secretariat, we find an objective noting which is in pleasant contrast with the recommendations of the Forest officials. They pointed out that it was a case of a single tender and it was contrary to the policy of the Government to accept it and that it must be referred to the Finance Department before the matter was placed before the Council of Ministers, but the Minister Mr. Sogami countermanded this suggestion of a reference to the Finance Department and suggested instead that the recommendation of the Conservator might be accepted and the papers accordingly forwarded to the respondent. This attitude on the part of the Minister is somewhat strange and out of the ordinary. It was he who had on the earlier occasion turned down the request of Haji & Co. to take the lease for Rs. 56 lakhs. If he had any recollection of this he would have seen that Rs. 52 lakhs was not the maximum that could have been obtained because it was only on the basis that calling for fresh tenders would be of no advantage that it is suggested that single tender should be accepted. But as there was no noting as regards the tender on the earlier occasion, it is possible that the Minister might not have recollected it. In the absence of any material it would not be possible to say that Mr. Sogami knew the identity of the party and that he passed the order as he did in order to benefit Ghulam Nabi.

8. 43. The last person whose knowledge in the affair has to be examined is the respondent. The respondent in his reply denies that he knew the constitution of J. K. Timber Traders. I am unable to accept the explanation as consistent with his conduct throughout. That generally he knew the lessees is evident by the file (Conservator of Forests Jammu File No. C-VII/-214/34 page 222) which records that a meeting of forest lessees would be held on the 4th of January to point out their difficulties to the respondent. The proceedings of that meeting show his acquaintance with their identity and his direction to them "to submit their tenders after due thought and according to terms and conditions stipulated in the tender notice", the lessees being cautioned that no deviation to these terms of the tender notice and agreement would be entertained, and he assured them that whenever practical difficulties came to the notice of the Government they would be redressed. This is, no doubt, general but coming to the particular case, we have the fact that in the present case

the re-tender was directed without reference to the Cabinet on 10th February, 1960 even though by that time Haji & Co. had not withdrawn their offer to take the lease for Rs. 56 lakhs. There could be no doubt that this direction for re-tendering was intended to benefit Haji Ghulam Nabi. I have already pointed out that the respondent could have obtained knowledge of the fact that Haji & Co. had backed out of the contract only from Ghulam Nabi, since the letter dated 3rd February, 1960 addressed by Haji & Co. to the Minister was not placed before the respondent. If so, It appears to me to follow almost as a necessary inference that he was aware of the identity of J. K. Timber Traders who made the second tender. I believe that it is for this reason that the respondent raises an alternative contention in his reply that assuming that the two firms were identical and the first tenderer had been black-listed, there was nothing in the rules as they then stood, prohibiting the same tenderer tendering in a different name.

8. 44. Pausing here I might deal with an instance given by the respondent in paragraph 14 of his reply where he says that the tender in regard to Marwa lease coupe 1960/62 was originally made by Rashid & Co. for Rs. 6,66,000/- and that later a re-tender was made by Ahad Associates and he adds a note that the proprietors of the two firms were the same, though they were doing business in different styles. I have two observations to make on this reference. The first is that the respondent was in the full know of the identity of the several lessees because there is nothing on the file to indicate the identity of either Rashid & Co. or Ahad Associates, but that apart, the illustration seems to be suffering from error. It is no doubt true that the lease of Marwa coupe for 1960-62 was re-tendered by Ahad Associates for Rs. 4,13,777 which was accepted, but the original tenderer for Rs. 6,66,000 was K. K. & Co. (vide Document 7-communication No. 5020C-VII-214 dated 8th January, 1960, page 3) and Document 8 (letter-No. 577/C of the Chief Conservator of Forests dated 11.1.60 pages 4 and 5). K. K. & Co. appear to have backed out of the lease and were blacklisted, their deposit having been forfeited and they were debarred from taking any further leases (Chief Conservator of Forests letter No. 1251/C dated 3rd February, 1960 - File No. C-VII-15/17 — Volume II page 241). Ahad Associates were one of the four tenderers on the second occasion and theirs was the highest tender. I do not, therefore, see any analogy or relevance in the illustrative case relied on by the respondent.

8. 45. The net result of the above discussion is that the Conservator, the Chief Conservator and the respondent were aware of the identity of the firm J. K. Timber Traders, but the Minister Mr. Sogami is not proved to have had that knowledge.

8. 46. The submission made that on the rules as they stood what was required was only a difference in name and not a difference in the identity of the party has only to be mentioned to be rejected. If the tender notices contained a provision for black listing and as I have shown that was put into force in the case of the others who had backed out of their accepted tenders which were opened on 6th January, 1960, it is impossible to conceive of the co-existence of this penalty with the escape suggested by the respondent that you had only to change your name in.

order to get rid of the penalty. I, therefore, reject this submission as not worth serious consideration.

8. 47. The next question turns round the propriety of the acceptance of the single tender. Learned counsel for the Government laid stress on two points. The first was that though the Forest Secretariat had in their notings suggested that in this case the matter should be referred to the Finance Department for their comments, this was overruled by the Minister Mr. Sogami and the Cabinet confirmed the decision of the Minister. The second point was that besides the overruling of the suggestion of the Finance Department there had been a deliberate departure from the established policy of the Government not to accept single tenders even in cases where in a particular instance it might be to the advantage of the Government. The respondent as well as Bakshi Ghulam Nabi have laid great stress on the fact that there were other instances where single tenders were accepted. I shall now proceed to deal with these instances because it is the case of the Government that the instances referred to by the respondent are really not in point. In this connection my attention was invited to Document 47 which is with reference to a tender in regard to forest leases during the year 1958. In regard to the compartments 17(b) to 22 Basant Garh, Billawar Division, where only one tender had been received from the Himalayan Forest Co. the Chief Conservator of Forests pointed out that in the previous year the maximum offer received was Rs. 12 4,19,000 but this was not accepted for some reason. The offer by the Himalayan Forest Co. then under consideration was for Rs. 4,55,555 which was about Rs. 36,000 more than the highest in the previous year. The Chief Conservator pointed out that owing to the nature of the timber available and the situation of the forest a higher tender could not be expected and he, therefore, suggested that "comparing with the previous year's offer with that of this year and also considering the other aspects it is recommended for sanction", but when the matter went up to the Government, his recommendation was not accepted and this lease was directed to be advertised for re-tender. Neither the respondent nor Bakshi Ghulam Nabi have adverted to this instance but have referred to six other instances in which single tenders are stated to have been accepted. I shall deal with each of them.

**(1) Gulab Garh lease of 1959 re:
Compartments 26(b), 28 and 29.**

This was not a case of a single tender at all. There were three tenders received. The offer of Deviditta Mal Munshi Ram & Co. referred to by the respondent was the second highest and was for Rs. 5,25,000 as mentioned in the reply, but this was not accepted. On retendering it was sold to Hindustan Forest Co. Private Ltd. for Rs. 6,57,000 on 4th March, 1961.

(2) Dudu lease compartments 75 to 81 in 1954-55.

This was before 1958 when a policy decision was taken that single tenders were not to be accepted except on proper grounds viz., that it was not possible to obtain any higher amount (vide the quotation from the Chief Conservator's letter at paragraph 8.—where he refers to the

policy "during the past 2 years"). The Dudu lease tender was accepted by Government order dated 22nd December, 1953 by the respondent as Prime Minister, but this was before this policy decision was taken.

(3) Basantgarh lease of compartments 49a and 49b in 1964.

The offer received was for Rs. 87,000. At the stage of the first tender there was only a single offer for Rs. 84,300/- This was directed to be re-tendered. On the second occasion a single tender was received for Rs. 87,909/- Considering that this was better than the first and as leases where the amount of the bid was less than Rs. 1 lakh were under the rules within the competence of the Chief Conservator to sanction, the Chief Conservator sanctioned it and addressed the Government for its concurrence. As it was "a petty lease" and its sanction was within the competence of the Chief Conservator who stated that this was the best offer that could be received it was agreed to by the Government.

(4) Ramban lease of compartments 44, 49 and 50 in 1956.

This again was a lease which was sanctioned before 1958 when this policy decision was taken. Besides, it was a "petty lease", i. e. below Rs. 1 lakh which the Chief Conservator could sanction but subject to confirmation by the Government. The Chief Conservator stated in his note to the Government that no more could be obtained.

(5) Arnas Chir lease compartments 109, 111, 122 and 123 of 1963.

This again was a "petty lease", i. e. within Rs. 1 lakh which was recommended for confirmation by the Chief Conservator on the ground that no higher sum could be obtained.

(6) Basantgarh lease compartments 69, 70 and 71 of 1957.

The lease amount here was Rs. 31,250/- This was a "petty lease" and was sanctioned by the Chief Conservator by his order dated 25th October, 1956.

8. 48. The respondent is, therefore, not correct in citing these instances as cases which would afford an analogy to the case on hand. Four of these are petty leases and the first one—Gulabgarh lease in 1959, i. e. the one after 1958—was not a case of a single tender, and the second instance of an amount higher than Rs. 1 lakh is of the year 1954-55 before this policy decision was taken. Though from the reference to the several files which he has made in his reply, the respondent appears to have been well acquainted with the intimate details of the forest leases granted from 1954 to 1964, he has not been able to cite a single instance after 1958 of a single tender which was accepted—at least without a scrutiny that it was the highest amount that could be obtained. Further these instances, therefore, do not answer the point made by the learned counsel for the Government that in the present case there was before the Forest Officials and the Govt. on the date of the acceptance of the re-tender, the offer for Rs. 56 lakhs by Haji & Co. which was ignored by the officers.

who were aware of the existence. It could not, therefore, be said that on the date when the tender was accepted, Rs. 52 lakhs was the highest amount that could be obtained for this lease.

8. 49. The respondent makes one further suggestion to which reference has to be made before passing on from this topic. He states that as the retender for Rs. 52 lakhs was higher than the second highest tender on the first occasion, there was no impropriety in accepting it. There does not seem to be any principle behind the suggestion made nor is there any justification for it in the practice which obtained. He has not referred even to a single instance in which on the basis of this principle in any instance a single retender was accepted. On the other hand it was suggested by learned counsel for the Government that the principle consistently followed in these cases from 1958 was to examine whether a higher bid could be obtained and it was only in a few exceptional cases where the Department was satisfied on this score that any departure was made in the rule as to non-acceptance of single tenders. The object of the reference to the Finance Department was precisely for the purpose of ascertaining whether it was a fit case for deviating from the established rule and though the Secretariat suggested the obtaining of the comments of the Finance Department this was overruled by the Minister in the present case. The respondent is, therefore, not right in saying that the circumstances that the bid amount on the occasion of the retender—Rs. 52 lakhs—was higher than the Rs. 49 lakhs which was the second highest tender on the first occasion was sufficient reason for accepting the single retender.

8. 50. A question that next arises is as to whether the Government have been able to bring home to the respondent the charge of abuse of power in the acceptance of this single tender. I have already pointed out that when the acceptance of this retender was recommended by the Conservator of Forests and the Chief Conservator, they knew of the identity between the J. K. Timber Traders and of Haji & Co. as also of Haji & Co.'s counter offer for Rs. 56 lakhs, as well as of the order to blacklist Haji & Co. passed by the Minister Mr. Sogami. So far as they are concerned, the impropriety of their action in making the recommendation is beyond doubt. I have also pointed out that the same could not be said of Mr. Sogami and that in his case I was inclined to hold that he was not aware of the identity of J. K. Timber Traders with Haji & Co. whom he had directed to be blacklisted and of the circumstance that an offer for Rs. 56 lakhs by Haji & Co. was still pending consideration before the Forest officials. The reasons given by him for the order that he passed recommending the acceptance of the retender were that the season was advanced and that the agreements might be entered into not merely in the case of the two retenders which were cases where the highest among the multiple tenders were accepted but also in this one which was a case of a single tender. The *bona fides* of Mr. Sogami in passing this order have not been impeached though much has been said about its correctness. It was this order that was placed before the Cabinet on the 16th March, 1960. The respondent was present at the Cabinet meeting and I have already rejected his case that he was not aware of the identity of J. K. Timber Traders. The exact part played by the respondent at the Cabinet meeting is not in evidence and what we have is merely that the Cabinet confirmed the recommendations of the Minister. There is nothing to

indicate that it was as a result of the respondent's initiative that the resolution in this form was passed. On the other hand I have no doubt that if the respondent had acted with due regard to the interests of the State the resolution would not have been passed, at least not in that form, but this, however, would not be sufficient to hold that he had abused his power or position as Prime Minister to get this resolution passed. The utmost that could be said, therefore, is that he did not do all that he ought to have done to protect the interests of the State because the interest of his brother was involved. Though, there is some element of impropriety of the attitude which he must have taken at this Cabinet meeting, I am unable to hold that the charge of abuse of power as formulated in Allegation 30 is made out. The Government no doubt have in the event suffered a loss of at least Rs. 4 lakhs by the acceptance of the retender, the benefit of which has accrued to Ghulam Nabi, I cannot hold that this financial advantage has accrued to him as a result of the abuse of power on the part of the respondent.

8. 51. The respondent has submitted a long list of over 20 files which he desired to be summoned for the purpose of proving his defence. In regard to some the respondent himself has filed copies of the Government orders called for, though he has not made it clear how he happened to be in possession of them. I passed the direction requiring the Government to produce the files whose production was sought for by the respondent and in pursuance of my order all but two of them have been produced. The reason for the non-production of these two was that in one case sufficient details were not given to identify the file and in another there was no such file. I have perused the files which have been produced and it appears to me that the object of calling for the production of these files was to show that on retendering the amount bid was less than the highest amount bid on the occasion of the first tender. It is hardly necessary for me to say that this is wholly irrelevant to the inquiry into this charge. It is not the case of the Government that in every case of retender the amount on the second occasion would be higher than on the first. The respondent has appended to his reply Annexure 'A' in which copies of some Government Orders are attached. The body of the reply does not clearly indicate the purpose for which these Government Orders are intended, but from their perusal it looks to me that the object of referring to them is to show that there are other instances where action was taken by Ministers in anticipation of Cabinet confirmation. This again is not a matter on which there is any dispute or controversy and these Government Orders are, therefore, not very relevant. I am, therefore, not referring to the contents of these files or Government Orders, the details of which were placed before me in great elaboration by the learned counsel for the Government.

9.1. Now that I am on the forest leases of Ghulam Nabi in 1960, it would be convenient to refer to and deal with another charge that has been made against the respondent that he abused his power and position by having undue favour shown to his brother Ghulam Nabi in his forest business by getting the Electricity Department of the Government to provide at the cost of the State an electrical connection to his saw mill. This is the subject-matter of Allegation 33 which

as set out in the notification reads as follows :—

“By the abuse and exploitation of the official position of Bakshi Ghulam Mohammad, during the year 1959-60 pecuniary advantage was obtained by his brother Bakshi Ghulam Nabi, to the extent of Rs. 16,000/- on account of electric connection provided to Bakshi Ghulam Nabi's Saw Mill at Village Kakpora, at Government cost and against normal rules and procedure”.

9.2. The case of the Government as regards the charge contained in the above allegations is briefly as follows : Bakshi Ghulam Nabi was carrying on business in partnership with others in taking leases of forests in Kashmir under the name and style of Ghulam Nabi Nur-ud-Din. For the purpose of working the timber collected in the forests which the firm had taken on lease Ghulam Nabi was desirous of setting up a saw mill. The first site chosen by him for the erection of this mill was at Hawl. In April 1958 he moved the Electrical Department authorities for getting power connection for his saw mill. The village of Hawl had not by then been electrified and when Ghulam Nabi made a request that he be granted an electrical connection, an electric transformer which was then at a place called Pulwama was shifted to Hawl by the Electricity Department and connection was given to him by 110 K.V. Transformer. The cost of the transformer as well as the shifting and the expenses in connection with affording this connection by providing supply lines were all borne by the Government. This was because on the basis of certain calculations the Government had considered that it would be worthwhile to bear all this expenditure, in the event of the consumer Ghulam Nabi guaranteeing payment of revenue of the extent of Rs. 5,000/- per annum and sanction had been accorded on 3rd May, 1958 to give him the connection on condition of his guaranteeing payment of this minimum amount of electric charges. Without, however, a written guarantee in these terms being taken the electrical connection was given to his saw mill on 19th August, 1959 by shifting the transformer to Hawl and by the provision of the necessary supply lines.

9.3. The provision of this electrical connection at the cost of the Government is not, however, the subject of any complaint or is this the charge made against the respondent but I have stated it merely as introductory to the case in relation to the next shifting of the electrical connection from Hawl to Kakpora.

9.4. Within less than four months after the electrical connection was given to him at Hawl, Ghulam Nabi considered that it would be more advantageous to him to have his saw mill at a place called Kakpora, which was nearer the National Highway and the river. He accordingly made an application on 15th December, 1959 (Document 3) in which after stating that he proposed to shift his saw mill from Hawl to Kakpora requested that the electrical connection granted to him might also be shifted and that his mill at the shifted site be connected to the electrical system. He desired this to be done at Government expense stating that the revenue charges justified such a shifting. This application was

presented to the Minister incharge Shri Sogami personally and on the same day he marked it to the Chief Engineer with a note reading : "Issue as prayed for under rules". The Chief Engineer marked it to the Electrical Engineer (E.E) Sindh also on the same day with the note—"for doing the needful as directed by the Health and Power Minister". The Electrical Engineer called for a report from the Assistant Electrical Engineer including an estimate of the cost which the shifting would entail. He also wanted that the Assistant Electrical Engineer should report on the power charges that were being paid by the applicant yearly. On receipt of this communication from the Electrical Engineer the Assistant Electrical Engineer prepared a rough site plan (Document 6) of the way in which the lines could be taken and also prepared an estimate (Document 7) working out to about Rs. 24,800/- for the construction of the new line as well as for shifting the transformer station from Hawl to Kakpora. This plan was prepared on the basis of a scheme which involved the electrification of the entire village of Kakpora which had 500 houses on that date. In the covering letter (Document 5) forwarding the estimates he stated that after all the houses were supplied with power, the expenditure involved "may be favourably yielding". He, however, did not work out the financial aspects in detail on the basis of the entire cost being debited to the Government. This he was asked to do by a further communication from the Electrical Engineer but meanwhile the Chief Engineer Electricity himself evidently considered that this scheme was too expensive and desired to have the supply line being taken not through the village but straight from the proposed transformer station to the mill of Bakshi Ghulam Nabi at Kakpora. He, therefore, directed for a fresh plan being prepared and this was accordingly done and the estimate for the direct connection from the transformer to the mill came to Rs. 16,035/- (Document 8). The Electrical Engineer also enclosed a statement working out the financial aspects of an expenditure of Rs. 16,100/- out of public funds. He calculated that if the Government could obtain from the applicant Bakshi Ghulam Nabi a revenue of Rs. 200/- a month, the expenditure on the shifting would not lead to any loss. In making this calculation, however, he either inadvertently or otherwise omitted to take into account the interest on the capital cost. On receipt of this fresh estimate the Chief Engineer, Electricity passed an order in these terms:

"This may be sanctioned by debit to the grant of Rs. 80,000/- for "revenue earning works under extension of lines for Kashmir" provided the M.Os (mill owners) give stamped undertaking in writing that they guarantee minimum revenue of Rs. 200/- P.M. at this site".

A formal order to this effect (Document 12) was passed by which the extension of the line was made conditional on a stamped declaration being obtained from the mill owner guaranteeing this minimum revenue of Rs. 200/- per month. In this final order, however, of the Chief Engineer dated 26th May, 1960 he suggested that the cost of Rs. 16,000/- might be debited to the head "the installation of additional generating sets at Ganderbal Power House" under head "81-81 Capital Outlay on Electricity Schemes". The work as directed was completed but without any

declaration or guarantee being taken from the consumer as required by the Engineering Department.

9.5. It is pointed out that thereafter Bakshi Ghulam Nabi was never billed for more than the electricity consumed by him and that the cost of the energy supplied to him never exceeded Rs. 120/- a month though if he had entered into the guarantee he would have had to pay the minimum sum of Rs. 200/- per mensem.

9.6. The points that are urged in support of the charge contained in this allegation are—

- (1) that the giving of this connection at the cost of Government was contrary to the rules and it was done in consequence of undue favour shown by the respondent to his brother Bakshi Ghulam Nabi ;
- (2) that though the Chief Engineer had in the letter sanctioning the construction of the supply lines etc. made it a condition that this should be done at Government cost only if the applicant executed a stamped declaration guaranteeing payment of a minimum amount of Rs. 200/- per month, this condition was not insisted on and he was permitted to pay sums much less than the sum of Rs. 200/- stipulated ; and
- (3) that even this Rs. 120/- a month with the meter rent in addition was not collected regularly from Bakshi Ghulam Nabi but that he paid the arrears due from him only after Bakshi Ghulam Mohammad ceased to be the Prime Minister.

In support of the case of the Government as regards 1st point they have filed the relevant documents in two illustrative cases of messrs Abdul Ghani Khan & Co. for supply of power at Sowara and M/S Mohmed Ahsan & Co. at Deabgah. In both these cases one of which was of April 1958 and the other of August 1963 to January 1964 it is found that when a request was made for a fresh connection, payment in advance of the entire cost of the supply lines as well as of the transformer was insisted on and it was only after the payment was made that the work was proceeded with and the connection asked for given. The inference to be drawn from these examples was fortified by a statement in the affidavits that the case of Ghulam Nabi was the only one of its kind where the cost of transferring a line was borne by Government. Relying on this it was submitted that such payment was not merely required by the rules but was also the prevailing practice and that the departure in the present case came in because of the relationship between the applicant Bakshi Ghulam Nabi and the respondent.

9.7. Before proceeding to consider the defence of the respondent as well as the statement in reply of Bakshi Ghulam Nabi to whom notice was issued under Rule 6(1)(a), it would be convenient to refer to the manner in which the complicity of the respondent in the favour alleged

to have been shown to Bakshi Ghulam Nabi is sought to be established. It was stated in the affidavits of some of the officers of the Electricity Department that when they found that the Minister Mr. Sogami had directed the connection to be given "according to rules" and as in accordance with the rules Ghulam Nabi had to pay the cost they approached Ghulam Nabi for the purpose but that the latter told them that no payment should be demanded from him as the giving of the connection had been ordered by the respondent. They added further that on receiving this reply they approached the respondent for confirmation of the statement of his brother and that it was after they ascertained that it was so that they proceeded to execute the work at Government cost. It is needless to add that this statement as to what happened between the officers and Bakshi Ghulam Nabi as well as between them and the respondent are both denied by them in their replies and in their affidavits in support. There is no confirmation or corroboration of this version in any of the documents produced. I am, therefore, left with this that unless the circumstances of the case irresistably point to the conclusion that this debiting of the entire cost to the Government would not have taken place unless as a result of the interference of the respondent, I am bound to reject this part of the case.

9.8. The defence which has been raised by both the respondent as well as Bakshi Ghulam Nabi may briefly be classified under four heads :

- (1) That there was no rule that such connections could be given only at the cost of the party ;
- (2) the question whether the connection should be given at Government cost or at the cost of the party seeking the new supply line depended upon an appreciation by the Department of the revenue prospects from the extension of the line. The Electricity Department being worked as a commercial department if the extension of the line could bring in more revenue even from a long term point of view, there was nothing to prevent such extension being given at the cost of the Government for ultimately, if it is revenue paying both the public as well as the individual would benefit ;
- (3) there were a number of instances—as many as 10 were mentioned—in which it was stated that an extension had been given to parties at the cost of Government ; and
- (4) in his application Bakshi Ghulam Nabi had made it clear that he wanted the new connection at Government cost and when the Minister incharge—Shri Sogami—ordered it, the departmental officers had merely to carry it out. If they felt that according to the rules the request could not be granted, in the natural course of events they would have approached only Mr. Sogami for his directions or instructions in the matter as regards charging the party. In no event would it have been necessary for them to have approached the respondent who had nothing to do with

the Electricity Department for instructions in the matter. This is relied on for the purposes of saying that from the documents no irresistable inference could be drawn showing that the respondent was responsible for the expenses being debited to the Government.

9. 9. I shall now proceed to deal with these answers in some detail. Points (1) and (2) above of the defence may be considered together. Reference was made by Mr. Khanna learned counsel for the Government to Rule 10 of the Electricity Rules framed under the Jammu and Kashmir Electricity Act, Svt. 1997. It reads—

“10. The Department shall provide free of cost to a consumer service line not exceeding 100 feet in length from the nearest distribution line pole to the consumer's premises. The cost of service line required in excess of 100 feet, either within or outside the consumer's premises, shall be borne by the consumer himself”.

What we are here concerned with is not really the operation of this rule but of the admitted policy of Government of treating the Electricity Department as a commercial venture, the expansion of the distribution system to cater to the needs of larger undeveloped areas being also the concern of Government. In this connection Bakshi Ghulam Nabi in his reply relied on paragraph 3 in the affidavit of Jagar Nath Peer in Allegation 32 where this gentleman who is a Chief Engineer states—

“That the Electric Department is a commercial concern and extension of lines, to private houses is only undertaken at a cost of the consumer, or *where it is commercially sound*. But for obtaining a direct electric line for only lighting purposes the cost is to be borne by the consumer”.

If this were so, and Government are bound by the statement of their witness, it would follow that notwithstanding Rule 10 just now referred to, connections were given at Government cost on the basis of the scheme being revenue yielding on the capital expended and, therefore, being profitable. It is precisely from this aspect that the Chief Engineer and the Electrical Engineer seemed to have worked, when judging of the propriety of the request of Bakshi Ghulam Nabi that he be afforded this connection at State cost. The direction of the Electrical Engineer to the Assistant Engineer was that the latter should consider and report on the financial aspect of the question. This was considered and his omission to take into account the interest on the capital cost in working out the profitability of the scheme, this does not touch the present question. He arrived at the conclusion that if the consumer paid Rs. 200/- per mensem the connection would be revenue yielding and it is on that basis that the cost was directed to be borne by the Government. The fact that no agreement guaranteeing Rs. 200/- per mensem was taken from the consumer is wholly irrelevant to the question with which I am now concerned, for the failure to take the guarantee is not attributed to any action on the part of the respondent, and might possibly be due only to the inefficiency, negligence or favouritism of the Engineering

staff. In this connection I might point out that Bakshi Ghulam Nabi states in his reply that he did give a declaration but I consider that this is patently untrue as would be evident from the fact not merely that no such agreement is to be found in the records, and there is no reason why it should be missing, but that the bills that have been sent to him have been for only Rs. 120/- and meter rent on the basis of the power consumed and it is admitted that Bakshi Ghulam Nabi made no reference to his guarantee when making payment.

9. 10. The result of the above discussion, therefore, is that line was extended to Kakpora at the request of Bakshi Ghulam Nabi because the officers considered—we are not concerned with the correctness of their calculations—that the extension of the line to his saw mill would be a revenue yielding proposition. I have also to repeat that there is no evidence to connect the respondent with either the order to extend this line to the mill premises at Kakpora or in having this extension made at Government cost.

9. 11. In passing there is one point to which reference was made and that arises out of the debit of Rs. 16,000 to the "Installation of additional Generating sets at Ganderbal Power House, Head 81-81 Capital Outlay on Electricity Schemes", as pointing to a conscious act of impropriety on the part of the officers. Though undoubtedly this raises some suspicion I do not, however, attach much significance to this because it was possible that it was merely an adjustment to a head in which funds were available. If one were satisfied about the propriety of the extension and Jagarnath Peer's own affidavit in Allegation 32 seems to make it out, no impropriety can attach to it merely by reason of the head to which the amount was debited. In view of my above conclusions, I do not consider it necessary to discuss in any detail the ten instances which are referred to in the reply of the respondent and Bakshi Ghulam Nabi as cases in which Government bore the expense of the extension of lines.

9. 12. Learned counsel Mr. Khanna has placed before me the entire files in relation to these several instances and I find that except in the one case of Abdul Ghani Bhat in all the other 9 cases the expenses of putting up the supply lines or alterations in the site of the transformer etc. were all borne by the parties themselves. Abdul Ghani Bhat's case was stated to be distinct because the respondent was himself interested in him (vide Allegations 14 and 15) and for that reason learned counsel submitted that it did not constitute any departure from the normal and proper rule. Learned counsel is no doubt right in the submission as regards the probative value of the several instances but having regard to the circumstances to which I have pointed out earlier as the basis on which the expenses involved in the erection of the supply lines and the shifting of the transformer were debited to Government on the footing of the same being a revenue yielding project, I do not consider these instances as invalidating the defence in the main.

9. 13. In view of what I have stated earlier, I consider that the Government have failed to establish the charge contained in Allegation 33 and I record my finding accordingly.

10. 1. We have now reached almost the end of 1960 when events of considerable significance were taking place in the family. I have to recall that at this date almost the entire range of activities of the family were centred on the firm of Feroze & Co. and this firm in its own name was still carrying on the business of contractors for supplies to the army which was being managed by Abdul Majid. The subsidiary firms, however, had far outgrown the parent body. These subsidiary concerns were being managed by different members of the family and in particular it might be mentioned that while Ghulam Nabi and his sons were generally incharge of the forest businesses, which were being carried on under various names, Bakshi Bashir Ahmed was in sole management of Fairdeal Motors, Srinagar. Abdul Majid was also interested in the automobile business, being a partner in Jay Kay Automobiles, Srinagar and Jammu as well as Fairdeal Motors, Indore. Ghulam Nabi had also some interest in the automobile business, his son Yusuf being a partner in Kathua Motors. In the automobile business were also Ghulam Ahmed and Ghulam Hussain, maternal and paternal cousins of the respondent, being partners in Kashmir Motors, Srinagar.

10. 2. This description of the activities of the several members of the family though not exhaustive, is sufficient to indicate that every group in the family was not called on to or was putting forth its efforts or capital in these concerns though as partners of Feroze & Co. all the ten partners were each deriving an one-tenth share. Besides, it is seen from the income-tax returns, that after 1957 when Fairdeal Motors, Srinagar was started and the TELCO agency for the Kashmir Province was secured, it was this branch of Feroze & Co. that was contributing a major, if not almost the entirety of the profits, of Feroze & Co. This necessarily meant that though the agency had been secured for the primary benefit of Bashir Ahmed who had qualified himself as an automobile engineer, he was having just one-tenth share in its profits or if his sister Shama Mir's share was also included, an one-fifth share because its profits went into the pool of Feroze & Co. where he derived only that share of profit. Besides, the inequality created by this, we have the fact that Ghulam Nabi and his group had in Feroze & Co. fourth-tenth share (Ghulam Nabi and his three sons Mohammad Yusuf, Ghulam Hassan and Mohammad Shaffi were partners in Feroze & Co.) though it does not seem that every one of his forest concerns was really a subsidiary of Feroze & Co. and if this were so, he was deriving his profits from those separate and individual concerns besides getting a disproportionate share of profits from Feroze & Co. On the other hand Abdul Majid who undertook a major share of the work had only one share, namely one-tenth, because he was the sole representative of his branch. Again, Abdul Rashid does not seem to have contributed any work towards any of the concerns which brought in income to Feroze & Co. but was still having his one-tenth share, the same as Abdul Majid. Similar was the position of Mustafa, the husband of the respondent's sister. It was this unequal work and disproportionate share of profits for some groups that appears to have led to disputes and differences in the family and between the partners of Feroze & Co. and its subsidiary concerns which came to a head towards the end of 1960. Besides some of the members of the family ran independent businesses—some very lucrative

which they claimed were outside the family pool—. Thus Abdul Majid has his cinemas, Ghulam Nabi his partnership for taking forest contracts to mention only a few. I am cautious in stating this as the reason for these disputes because though it is admitted that there were disputes and this is recited in the documents executed between the parties, the precise nature of the disputes and the causes which led to them are not spelt out distinctly and the above is only my inference from the admitted facts. The documents I am having in mind in drawing these inferences are an agreement for reference of the disputes to the arbitration of Mr. J. N. Bhat, Advocate, now a Judge of the High Court, the statements recorded by him and the award passed by him on this reference. The agreement to refer is dated 25th February, 1961 and the award of the arbitrator dated 12th June, 1961 (vide Document 45 in Allegation 1) though it would appear that the parties had settled their disputes between themselves by the 25th December, 1960 and, therefore, the award was to be effective from 1-1-61. I shall make short extracts from these documents for indicating the disagreements between the partners. In the agreement of reference, after reciting several businesses which were started by Feroze & Co., it continues—

“The parties for some time past have been feeling dissatisfied with the working of these different concerns. Some of the executants of this agreement feel that the shares in profits from these business concerns are not proportionate to the capital invested by each one of the partners in these concerns, and their labour. If this state of affairs is allowed to continue, there may be more bitterness between the parties to this agreement who come from the same stock which may give rise to complications and may strain their relationship with each other.

“Now, to put a stop to any future dangers to the well-knit family structure of the parties, and their good relations and respect and love for each other, the parties on 26th of December 1960 in pursuance of their intention to separate in business and the above-named partnerships, executed some documents.....”

In the award, the arbitrator stated, again after reciting the starting of Feroze & Co. and the coming into existence of its several subsidiaries—

“By about middle of the year 1960 some of the parties to the agreement of arbitration had a feeling that everybody's efforts were not being properly rewarded and that there was not smooth working because of inter-relationship between the partners, unnecessary interference and chances of unhealthy competition, as the different concerns carried on similar businesses, the profits that each one of the parties is entitled to was not in proportion to the labour that he put in and the extent of the investment he had made. Relations began to get somewhat strained and it appears that smooth sailing in these business concerns would be very greatly impaired..... Before the relations of the parties would get still more strained and bad

blood would creep in and spoil the solidarity of a very well-knit and well known family and further troubles would ensue, the parties agreed that these business enterprises as they are going on should end and the partnership be dissolved with effect from the end of December, 1960".

However, even before they agreed to refer the matter to arbitration they had, as would be seen from the extracts from the reference as well as the award extracted earlier, themselves decided the main matters—

- (1) That Feroze & Co. should stand dissolved as and from the 31st December, 1960.
- (2) The manner in which and the persons to whom the different concerns in which the several members of the family were interested, should be allotted.

10.3. In pursuance of this arrangement the parties executed several documents on the 26th December, 1960 to which it is necessary to make a reference. As it was found that one of the partners of Feroze & Co. Mohammad Shaffi son of Ghulam Nabi had not joined in the original document of dissolution, it was thought that this defect could be made up if he joined the reference to arbitration in which they could have an award passed in terms of their previous agreement. From the terms of the award as well as from the statements recorded by the arbitrator before he passed the award, it appears that there were very few points of difference between the parties which had to be resolved by the arbitrator and the object of having an arbitrator and proceeding through the process of arbitration was merely to give legal form and binding efficacy to the arrangements to which they had themselves agreed. From the terms of reference, however, it would appear that the parties desired the arbitrator to adjudicate upon the title to or divide between them of five items of immoveable property, but the award is absolutely silent about this matter, possibly because even in regard to these, the parties had adjusted their differences between themselves.

10. 4. The object of my referring to these disputes, to the break up of Feroze & Co. and to the allotment of the several concerns to the different members of the family of the respondent is on account of the fact that reliance has been placed by learned counsel for the Government on the background that this furnishes for the several charges of misconduct which have been levelled against the respondent from about the end of 1960 to October 1963. Out of the 34 allegations in Schedule II (omitting Allegation 1 & 8, 13 and 28 which were dropped) as many as 23 relate to this period of three years and the principal beneficiaries who are alleged to have received financial advantage by the abuse of power are Abdul Rashid and his group, Abdul Majid, Ghulam Nabi and to a very large extent Bashir Ahmed himself. So far as the other members of the family are concerned, the only charge of consequence relevant to them is the allotment of house sites under the Low-Income-Group Housing Scheme between 1961 and 1963.

10. 5. It is the submission of learned counsel for the Government that under the arrangements which were come to between the parties and which were confirmed by the award of Mr. J. N. Bhat, Abdul Rashid obtained very little, and that this disparity in the assets or businesses allotted to him or his group was made up by the respondent by allotting to his minor son two petrol pumps and by making it possible for him to obtain an agency for the transport of petrol and petrol products for ESSO Oil Co. These form the subject of Allegations 9, 10 and 19. I am mentioning these charges somewhat out of turn here, with a view to explain why I am proceeding to detail the allotment of the several businesses under the arrangement come to between the parties at the end of December 1960 and subsequently confirmed by the award of the arbitrator.

10. 6. After setting out how the partners of Feroze & Co. separated themselves to start new concerns under different names and some under formal partnership deeds which were either confined to the members of the family or in some cases took in strangers, the arbitrator expressed his agreement with the wisdom of the decisions of the parties to dissolve these concerns and "respecting this desire of theirs, I declare that all these firms shall stand dissolved as on 31st December, 1960. No further business will be carried on by the erstwhile partners in the above business concerns from 1st January, 1961". Then followed the allotments.

(1) The business of Feroze & Co. which had been carried on mostly by Abdul Majid was allotted to him. He was also allotted the agency of Bajaj Tempo Private Ltd. Bombay for the territory of Jammu and Kashmir and for goodwill of Feroze & Co. he was directed to pay the other partners Rs. 1,000.

(2) Jay Kay Automobiles, Jammu and Kashmir and Kathua Motors, Jammu was also allotted to Abdul Majid from the 1st January, 1961.

(3) Kashmir Motors, it will be recollected was a partnership in which there was a stranger partner Ali Shah who was entitled to a one-fourth share. The three-fourth share of the members of the family—Ghulam Ahmed, Bashir Ahmed and Ghulam Hassan—was also allotted to Abdul Majid.

(4) The TELCO agency in the name of Fairdeal Motors, Srinagar, was allotted exclusively to Bashir Ahmed. The Fairdeal Motors also had the agency of Lambretta Scooter which was also allotted to Bashir Ahmed and for this he was directed to pay Rs. 1,000/- to the other partners for the goodwill. In the business allotted to Bashir Ahmed there was a direction that his sister shall be an equal partner with him.

(5) Ghulam Nabi had been one of the partners in Fairdeal Motors, Jammu in which the family had 75% share, the other 25% belonging to stranger partner Mr. and Mrs. B.K. Bedi. The entirety of the 75% share of the family was allotted to Ghulam Nabi and his sons. So was the firm of Tasneem & Co. dealing in Forest contracts.

10.7. Ghulam Ahmed a maternal cousin of the respondent was not allotted any business but he was to be paid in cash Rs. 50,000/- made up of Rs. 30,000/- from Abdul Majid and Rs. 20,000/- from Bashir Ahmed. The respondent's sister Aisha Begum and her husband Ghulam Mustafa was also to get a sum in cash—Rs. 50,000/- which all the others were to pay.

10.8. Then dealing with Abdul Rashid, the arbitrator stated that as he had not been given any business, he was being allotted one-third of the claim which was the subject-matter of a suit for Rs. 5 lakhs instituted by Feroze & Co. against the Union of India. "The expenses of the litigation must be deducted and out of the net sum derived, if any, out of this litigation, Abdul Rashid was to get one-third and the remaining two-thirds was to be shared by Ghulam Nabi and Abdul Majid respectively in equal shares". (I should add that there is no material before me for ascertaining what actually Abdul Rashid obtained under this clause).

10.9. So far as the rest of the parties were concerned, the firm of Feroze & Co. was directed to refund to them the capital and other monies invested by them.

10.10. This analysis would show that the main parties who were allotted substantial businesses out of the division were—

(1) Bashir Ahmed who got allotted to him the very lucrative business of Fairdeal Motors, Srinagar against the payment of Rs. 1000/- to the other members of the family for goodwill plus a payment of Rs. 20,000/- to Ghulam Ahmed and his quota, I believe, of about Rs. 5,000/- to his aunt Aisha and her husband.

(2) The other major beneficiary was, Abdul Majid who besides the allotment of Jay Kay Automobiles and Kashmir Motors was also in receipt of considerable income from the two cinema theatres—Regal and Amrish—which he was running.

(3) The next was Ghulam Nabi who besides retaining his interest in the forest business was allotted the Fairdeal Motors, Indore which also appears to have been a prosperous concern. I might here refer to what the arbitrator Mr. J. N. Bhat himself records in an interim order passed by him on 9th May, 1961 (vide Document 45 in Allegation 1) that the parties had presented three statements of assets and liabilities one each regarding those of the branch of Ghulam Nabi, Bashir Ahmed and Abdul Majid.

(4) Abdul Rashid being engaged in politics evidently did not take any interest in business and that is why he was not allotted any business. He was allotted some minor sums of cash.

10.11. The terms of the settlement which I have been referring up to now, are those which appear in the award as it was passed and filed in the High Court.

10.12. It is the case of the Government that there were other terms which were agreed to between the parties with the joint approval of the respondent but which were either not disclosed to the arbitrator or which, in any event, do not form part of the terms of the award. There appears to be some substance in this submission of Government because we find that Bashir Ahmed in the reply that he filed to Allegation 23 refers to an agreement between himself and Abdul Majid to whom Kathua Motors and Kashmir Motors were allotted, about the adjustment of monies realised by the sale to the Government of certain trucks owned by the two concerns. Bashir Ahmed of course does not say that there was any understanding that the purchase of the chassis then in the hands of these two firms was to be by the Government, but that is how I read it, having regard to the several matters disclosed in this purchase which forms the subject of Allegation 23, and to what he himself says in his reply which I have extracted later. Besides this there is the fact that though Abdul Majid, Ghulam Nabi and Bashir Ahmed figured as co-vendees in the deed of sale executed by Shora of the residential property at Mamal, Pahalgam (vide Allegation 4) and though in the voluntary disclosure statement to the Income Tax Officer in February, 1956, Abdul Majid had stated that he had spent Rs. 70,000 on this property *i. e.* for its construction, still when the property was sold to the Northern Railway, the entirety of the consideration was taken by Bashir Ahmed. In this connection I might recall the reference by the arbitrator to sets of statements of assets and liabilities of the concerns being allotted to the three main branches of Bashir Ahmed, Abdul Majid and Ghulam Nabi, but none of these three parties to whom notices have been issued, have thought it advisable to produce these statements. In fact all the books of accounts of these concerns before 1960 are said not to be available, the reason given being that they were all destroyed by fire. I entertain grave doubts about the truth of the statement though on that account I am not drawing any adverse inference against the parties because of their non-production.

10.13. The reference that I made to the existence of terms and understandings between the parties which are not set out in the award, was for the purpose of referring to a submission of learned counsel for the Government that among the items of understanding between the parties was one that Abdul Rashid who was prominent member of the group nearest to the respondent should be conferred some benefits by the respondent to make up for the allotment of paltry sums that he had derived from Feroze & Co. and its subsidiaries at the time of the dissolution. This suggestion has been explicitly made by the Government in the statement of the case filed by them in regard to Allegations 9 and 10 which relate to the charge that the respondent by abuse of power had allotted sites for two petrol pumps one in Srinagar and another in Jammu in the name of Ghulam Jeelani a minor son of Abdul Rashid immediately the family businesses were broken up and Abdul Rashid ceased to obtain a share of the profits from these concerns. The suggestion has, of course, been denied by the respondent in his reply, but in doing so the respondent has gone further and asserted his complete ignorance about the businesses carried on by the several members of the family except by way of vague hear-say, about the manner in which these businesses were dissolved, the parties that were allotted the businesses commenced them

from 1st January, 1961 as their individual business as distinguished from their previously existing family business. I shall be discussing the details of the evidence in relation to the degree of knowledge of the respondent about these matters when dealing with the respective allegations, but I might here state that this plea of ignorance does not seem to be consistent with some undisputable facts to one of which I shall refer immediately.

10-14. I have already pointed out that even prior to the reference to arbitration in February 1961 the parties had as between themselves agreed to dissolve the several firms as and from the 31st December, 1960 and decided also about the parties to whom they were allotted. This agreement for dissolution of the several firms was reduced to writing on the 26th December, 1960 and four of these partnerships Kathua Motors, Tasneem & Co., Fairdeal Motors, Srinagar, and Fairdeal Forest Co. - were dissolved under deeds executed on 26th December, 1960 which were registered on that date. These are documents 35, 36, 41 and 46 respectively in Allegation 1. Besides there was an agreement (Document 56 *ibid* for the partition of the family house in Sonawarbagh together with the land on which the construction stood between Ghulam Nabi, Bashir, Ghulam Ahmed and Aisha (the property was purchased in February, 1955 from Mrs. Mukerji) (subject of Allegation 7) in the name of Ghulam Nabi. Now it is found that all these 5 documents were presented for registration before Shri Tara Chand Sharma, Sub-Registrar of Srinagar who was required to attend at 4, Hotel Road, Srinagar which was the official residence of the respondent to register these documents. They were all presented to him by the several parties who are the executants of these documents one after the other—Document 41 at 5.15 P. M., Document 36 at 5.45 P. M., Document 35 at 6.15 P. M. Document 56 at 6.30 P. M. and Document 46 at 7.00 P. M. on that date. It is stated in the registration endorsement that all these parties—more than a dozen of them—were present at the time of the registration. One other curious feature of the registration endorsement in these documents is, apart from the fact that the Sub-Registrar was called to come to a place outside his office to the residence of the parties—a procedure not contemplated by the rules because the executants were in a position to attend the office of the Registrar and could claim no special rights or privileges and that contrary to the rules the registration fee as well as the fee for requiring the Sub-Registrar to attend at a private residence “spot fee” as it is called—was directed to be paid later instead of as required by the rules being pre-paid. Learned counsel for the Government submitted that in the face of this large crowd of people having assembled in the respondent’s official residence, the Sub-Registrar being present there though he was not bound so to attend, the documents being presented to him there and the fees being collected later, all points not merely to the respondent’s awareness of these transactions going through at his residence but that it must have been at his instance that the Registrar departed from the strict letter of the rules to go to the private residence and to receive the fees for registration etc. later. I see considerable force in this submission of the learned counsel.

10- 15. I, therefore, proceed on the basis that the respondent

was aware of the break-up of the businesses, of the common family business which his brothers and other relations of his family were carrying on till then and with knowledge of the details of individual businesses which they were to carry on thereafter.

10-16. I have already stated that in dealing with the charges relating to the period between the end of 1960 and the end of 1963 I would be departing from the chronological order and deal in great part with the four principal groups which, it is stated, were the main object of this favour—Bashir Ahmed, Abdul Rashid, Abdul Majid and Ghulam Nabi and in that order.

10-17. Dealing first with the undue favours alleged to have been conferred upon his son Bakhshi Bashir Ahmed, I propose to deal with the relevant charges in the following orders as being both logical as well as convenient. I shall first take up the charges in respect of the Transport matters covered by Allegations 23 to 27 which range between the period January 1961, i. e. immediately Bakhshi Bashir Ahmed became the sole proprietor of Fairdeal Motors, Srinagar, to March-April 1963 when Bakhshi Bashir Ahmed obtained a contract with the Indian Oil Company for the transport of their petroleum and petroleum products from Pathankot to Srinagar and other places. Next I shall deal with certain miscellaneous charges by which benefits are said to have been conferred on Bakhshi Bashir Ahmed. These comprise the charges contained in Allegations 5, 6, 14, 15 and 32. I should add that both in Allegations 14 as well in 32 the charge is not confined to benefits conferred upon Bakhshi Bashir Ahmed himself but also extends to those obtained by the respondent himself. As it would not be necessary or convenient to separate the persons who are said to have benefited by the abuse of power referred to in these two allegations 14 and 32, I shall deal with them as a whole. Lastly, I shall take up for consideration the charge contained in Allegation 20 which relates to the manner in which Bakhshi Bashir Ahmed's wife Mrs. Yasmin Bakhshi who obtained an interest in Nedous Hotel, Srinagar acquired a long lease from Government of the buildings and premises in which that business was conducted.

10-18. It will be recollected that under the arrangements entered into between the parties at the end of 1960, Feroze & Co. was broken up and along with it, its subsidiaries including Fairdeal Motors, Srinagar. Reference has already been made to Document 41 in Allegation 1 which is the deed of dissolution of the Fairdeal Motors executed between the members of Feroze & Co. on the 26th December, 1960. This deed after referring to the business carried on by the persons named under the name and style of Fairdeal Motors, was agreed to be dissolved by mutual consent from the 31st December, 1960, and proceeded to state in paragraph 2 —

“From 1st January, 1961 party No. 1 Bakhshi Bashir Ahmed shall be at liberty to carry on the business in this firm name as he likes without any let or hinderance by erstwhile partners of the said Fairdeal Motors, Kashmir”,

of vehicles and could have been available only on payment of substantial margins. An examination of the ledgers and Bank statements of Fairdeal Motors discloses that this margin was 20% (vide p.11 of Journal of Fairdeal Motors, Srinagar produced by Bashir Ahmed for 28-4-61). Besides, in order to effect sales to third parties on credit, the value of the vehicles sold would have to be deposited which would mean that unless the constituent had at least Rs. 3 or 4 lakhs free, he could not do business on that scale. It is worth noting that the letter from the Bank does not indicate, nor does Bakshi Bashir Ahmed make any statement in that regard, that he was allowed any and if so what amount of clean overdraft for the purposes of his business. In these circumstances I do not attach much value to the letter from the Bank regarding the limit of accommodation permitted to Fairdeal Motors as helping him to prove that he had no need for financial assistance in running Fairdeal Motors when it started.

10-36. This would be a convenient point at which to attempt to summarise the transaction as found on examination. Bakshi Bashir Ahmed ceased to be a partner in Kashmir Motors and was allotted Fairdeal Motors, Srinagar to do business on his own account. This arrangement was to have effect from 1-1-1961. The re-constituted firm of Fairdeal Motors under the sole proprietorship of Bakshi Bashir Ahmed was in need of funds to carry on its business. It held a very profitable agency, among others, of TELCOs which was making large supplies of chassis to Government. At about the time when the partnerships of Kashmir Motors and Kathua Motors were being re-constituted, they had on their stocks nine Bedford vehicles, eight of them diesel and one petrol driven. The Government was not in any need to purchase these vehicles but there had been an arrangement between Bakshi Bashir Ahmed and the partners of Kathua Motors and Kashmir Motors that he would sell the Bedford trucks to the Government, realise and take the sale proceeds to his concern Fairdeal Motors. Without any written orders, without any processing by the Department, without any investigation as to the need for these vehicles or as to whether any particular Department needed them, Bakshi Bashir Ahmed had been informally told by the Transport Commissioner that the Government would be purchasing these vehicles and paying him the proceeds. No sooner had this order been communicated than the vehicles were delivered and arrangements were made for the payment of the price to Bakshi of Bashir Ahmed all within ten days.

10-37. It is stated by Mr. S. K. Raina, the then Transport Commissioner in the affidavit that he has filed that he did all this and gave instructions to his subordinates to carry it out because he was verbally directed by the respondent to effect this purchase and thus assist Bakshi Bashir Ahmed in this new business and so far as the Commission is concerned, this is the gravamen of the charge which has to be inquired into. But for the reasons already stated, I am not treating this statement, though on oath, as any material on which to base my finding.

10-38. In the reply that he has filed to Allegation 24, the respondent says that he was not aware of who the partners of Fairdeal Motors were after the award of Mr. J. N. Bhat. This, however, is of little

significance provided he knew Bakshi Bashir Ahmed was among the Proprietors for the transactions which are the subjects of Allegations 23 and 24 are stated to have been effected in order to benefit Bashir Ahmed. That he was present when the business was formally opened on 11th January, 1961 is seen from the diary of Abdul Ghani Bhat extracts from which have been filed as Document 11 in Allegation 14. Entries in this account for the date 11th January, 1961 read —

“Payment to Bashir Ahmed Bakshi—Cash Prime Minister Rs. 111/-”

Then follow other items of expenses in connection with the tea etc on that occasion and it winds up in these terms :

“Today Prime Minister laid the foundation of show-room at Kothi Bagh at 10.00 a.m. and left for Jammu at 2.00. P. m. by car.”

This is confirmed by the entry in Fairdeal Motors' ledger for 1961-62 on page 1 against date 11th January, 1961 of a cash payment of Rs. 111- by the respondent his name in the ledger page itself being written by himself (vide Document 19).

10-39. In regard to the main charge his reply is that he was not aware of the purchases of those nine chassis and so he could not say anything about it, in the absence of the relevant files which are in the custody of the Government. The documents in the folders, which the respondent has inspected give a correct picture of the transactions. Every relevant file which bears out these documents and the statement of the case is before me and I have summarised their contents. He adds that all orders for purchases were placed by the Transport Controller and that he or the then Transport Minister Mr. Rajpuri would come to know of them only when proposals were put up by the Transport Controller. If by the reference to Mr. Rajpuri being the Transport Minister at the time, the respondent means that his colleague should be held responsible for the irregularity, he is not correct, for I have already pointed out that no written order was placed for these vehicles, so as to this obtaining the approval of the Minister in charge. As there is no suggestion that Mr. Rajpuri gave any verbal orders to the Transport Controller, we are left with the respondent as one who must have directed or approved of the purchase. The respondent then goes on to deny that he gave any verbal direction to Shri S. K. Raina to make the purchase, adding that though he sometimes made verbal directions he saw to it that the same were confirmed in writing subsequently and in the absence of the Government producing such confirmation of verbal orders, it should be held, that he had not given any such verbal directions. Besides, he avers that if there was any irregularity in placing the order it was entirely the responsibility of the Department and that he could not be asked to answer for it. I shall examine each of these points separately.

10-40. First, whether the Transport Controller made purchases on his own responsibility without the orders of the respondent. It would have been seen from the discussion of the matters in relation to Allegations 16 and 22 that it was on the orders of the respondent that

purchases were made of the vehicles concerned. In fact even the technical details as regards the relative performance of the various types of vehicles were examined by the technical experts of the Department and these were placed before him before he passed these orders.

10-41. But it further appears (see File No. TR 314/59-page 3) that the Home Department could also issue orders for the purchase of vehicles. In an order issued under the signature of the Home Secretary dealing with a controversy which arose as regards the authority competent to issue orders for the purchase of vehicles—a subject raised by the Transport Controller by a communication dated 27th February, 1959 to the Home Department the Home Secretary wrote :

“In respect of such orders (for purchase of vehicles) as may not be covered by this delegation (to the Minister incharge, Transport Deptt.).....the matter was placed before the Prime Minister who observed that in future Council sanction would be obtained in such cases.”

And this is dated 12th December, 1959. There was also some controversy whether the Finance Department and the Home Department should be consulted and their concurrence obtained before orders were placed but this may be omitted from consideration in the present context. Dealing with the same subject the Transport Commissioner states in the same file at p. 59 in a letter addressed to the Home Department dealing with an objection raised by the Accountant General as regards some of the purchases :

“I am to state that in the past the purchase of vehicles for this organisation was being effected generally with the approval of the Prime Minister or the Minister incharge (Transport) which in terms of para. 3 of Govt. Order No. 112-C of 1950 dated 24-1-1950 was vested with the powers of the Cabinet for the Transport Deptt. In a few cases the Deptt. did obtain Govt. sanction but it was all along felt that no such sanction was necessary”.

which meant that vehicles could not be purchased by the Transport Controller on his own initiative and responsibility without the orders of the Prime Minister or the Minister incharge. In this communication he requested that delegation may be accorded in favour of the Transport Commissioner and that the previous action of the Transport Commissioner in purchasing vehicles at the DGS&D rates *in accordance with the Prime Minister's verbal orders* be got regularised so that the audit objections on this account were settled once and for all.

10. 42. This is, therefore, an official record which proves that purchases were effected under verbal orders of the Prime Minister which were not subsequently confirmed in writing. For if confirmed in writing no audit objection could be raised and no regularisation would be needed. In addition, reference may also be made to the verbal orders of the Prime Minister for the allotment of cars referred and discussed

in Allegation 37 from which it would appear that there were several verbal orders and directions in relation to the purchase or sale of cars for which no official formal written record was kept. I have already extracted enough from the note of the Home Secretary in 1959 as regards the authority vested with powers to purchase vehicles. This was in the course of official correspondence which passed between the Transport Department, Home Ministry, Finance Ministry and the Audit Department and which was also brought to the notice of the respondent. It, therefore, appears to me unthinkable that the Transport Commissioner could have made the purchase of such a large number as nine trucks for the considerable sum of Rs. 2½ lakhs admittedly without the written orders of the Minister incharge, without at the least the verbal directions of the respondent as Prime Minister. This apart, it has not been suggested in any of the replies filed by the respondent, his son or those supporting him that the Transport Commissioner had any interest in Bakshi Bashir Ahmed to afford an explanation for his action in purchasing these vehicles and thus to give effect to what Bakshi Bashir Ahmed claims was the understanding between himself and the partners of the Kashmir Motors and Kathua Motors under which the Government was to purchase these vehicles and Fairdeal Motors was to get the price. The handing over of the letters addressed not merely to Kashmir Motors but those to the Manager of the Jammu & Kashmir Bank and the Kathua Motors personally to Bakshi Ghulam Ahmed who in his turn passed them on to Bakshi Bashir Ahmed is capable only of the construction that Bakshi Bashir Ahmed was able to obtain any concessions that he wanted in order to put the transaction through and in the form in which he desired. Besides, time seems to have been the essence of the matter and that is why the purchases were effected and delivery of the vehicles taken before the end of December and the direction to pay the price is issued in the first week of January, the orders themselves having been signed on 30th December, 1960. If urgency on the part of the Department to acquire the vehicles is put aside as clearly not established, the urgency can only be of the other party to this transaction, namely, Bakshi Bashir Ahmed, and if the amount of Rs. 2½ lakhs could have gone some way in meeting the needs of the newly constituted firm it serves as a very acceptable explanation of the entire transaction. I cannot conceive of the Transport Controller committing this irregularity of a purchase without a written order, except on the directions of the respondent—any direction by Mr. Sogami not being suggested. It is only this conclusion that seems to be consistent with the circumstances attendant on this transaction—absence of any need for the vehicles by the Transport Department, no requisition by the departmental officers or by officers in any other department, no processing of the placing of the order, absence of any written order and the manner and hurry in which the entire transaction was put through in the course of just a fortnight.

10. 43. I, therefore, find that Allegation 23 as notified is clearly established.

10. 44. That now remains for examination is as regards the financial advantage obtained by the firm of Fairdeal Motors Srinagar by this irregular and improper purchase. The price paid for the vehicles was the market price and hence there was no loss to the Government.

by way of any over-payment on that score, nor conversely any undue profit derived by the firms by reason of effecting this sale. As I have already pointed out earlier, the object of this purchase was to put into the hands of Fairdeal Motors, Srinagar which came into sole proprietorship of Bakshi Bashir Ahmed from 1st January, 1961, liquid cash to serve as working capital. Learned counsel for the Government submitted that the proper method of evaluating the financial advantage gained by this transaction would be to compute the interest which the firm derived by the receipt of this money, say for a period of six months. I consider this suggestion reasonable and I accept it. On this basis the financial advantage obtained by Bakshi Bashir Ahmed by the transaction in Allegation 23 would be Rs. 7,393.00, being the interest on Rs. 2,46,435.00 at 6% for a period of six months. In view, however, of this sum being reflected in the profits of Fairdeal Motors for 1961-63 which have been taken into account in assessing the financial advantages secured by the abuse in Allegation 16, I am omitting it as an independent item.

11. 1. Allegation 24 which is connected with Allegation 23 is set out in the notification in these terms :—

“In January 1961, Bakshi Ghulam Mohammad obtained undue pecuniary advantage for his son and daughter, in as much as a sum of Rs. 1,00,000 was irregularly advanced at his instance by the J & K Transport Department, to Messrs Fairdeal Motors, a firm owned by his wife, son, daughter and some other near relatives.”

11. 2. The substance of the charge would be seen to be the improper payment of Rs. 1 lakh at the instance of the respondent to Messrs Fairdeal Motors Srinagar the firm of which his son was sole proprietor in January 1961.

11. 3. The background in which according to the Government this charge has to be considered has already been set out before dealing with the charge in Allegation 23. It is the case of the Government that Bakshi Bashir Ahmed found himself in difficulties for finance to continue the business which fell to his share, and that it was in order to help him to tide over the lack of funds, that besides the unwanted purchase of the nine vehicles—dealt with already—the respondent got the Transport Department to improperly advance to Fairdeal Motors the sum of Rs. 1 lakh and that is the subject of this charge.

11. 4. In dealing with this charge again, I consider it would tend to convenience first to narrate facts regarding which there is no dispute, reserving for later discussion those on which the controversy turns. That the sum of Rs. 1,00,000/- was paid to Fairdeal Motors in January 1961 is admitted. On 9th January, 1961 Mr. S. K. Raina the Transport Commissioner addressed a memorandum to the Jammu and Kashmir Bank Ltd., Srinagar (Document 2) directing it to pay Rs. one lakh to Fairdeal Motors debiting it to his official account. As seen from the footnote to it, a copy of this memorandum was addressed

to Fairdeal Motors for information and the note reads :

"Out of this amount Rupees Fifty thousand are towards on account of cost chassis and Rupees fifty thousand towards on a/c cost of Spare Parts ordered on them".

The Jammu & Kashmir Bank made out a pay order in favour of Fairdeal Motors on 10th January, 1961 authorising the firm to draw the sum of Rs. one lakh as per the letter of the Transport Commissioner dated 9th January, 1961. Fairdeal Motors accordingly drew on the Bank on 13th January, 1961 and were paid the amount which was credited to the firm's account with the United Commercial Bank.

11. 5. Now about the irregularities attending this advance payment which are claimed to make it improper and which constitute the gravamen of the charge. Briefly stated these are :

- (i) that no order for spare parts for which a moiety of this amount was paid preceded the payment of the advance ;
- (ii) that the order was not processed by the Department, no list having been made by the proper authority of the spares needed and this being checked etc. before the order was forwarded. There is on record, therefore, nothing to indicate whether the spares ordered were really needed or not. This circumstance is relied on as proof of the Transport Commissioner having been directed by the respondent to make the advance, since the officers would not have made a blatant departure from the rules but for a direction from such a source ;
- (iii) that so far as the Department was concerned, there was no necessity for the payment of the advance, since TELCO, the manufacturers of these spare parts had, in their circular letter relating to the supply of spares, agreed to receive payment weeks after the supply was actually made ;
- (iv) that these spare parts were not purchased "off the shelf" of Fairdeals, for they were supplied over a long period of time, as and when it suited the suppliers without a schedule of delivery for particular items being stipulated as is usual in Government contracts.
- (v) Rs. 50,000/- was according to the original order for the supply of vehicle chassis, but no attempt was made to supply any chassis but instead CEAT Tyres were accepted. This supply was in November-December, 1961. This showed that either there was no need for chassis on 9-1-61, or that the order therefor was a makebelieve in order to justify the payment of the advance of Rs. 50,000/-.

These unusual features attending on this advance are relied on to prove that the statements in the several affidavits that the advance was paid at

the instance of the respondent are true. Another factor relied on is the significance of the date 9-1-1961—when the payment of the advance was ordered by the Transport Commissioner. It is pointed out that Fairdeal Motors fell to the share of Bakshi Bashir Ahmed and his sister as and from 1-1-1961, and that he had difficulties in finding finance immediately and that to relieve him, nine Bedford Trucks with which Allegation 23 is concerned were purchased and about Rs. 2½ lakhs were paid to Fairdeal Motors in the first week of January 1961, when also this payment of Rs. one lakh was made. On the basis of these circumstances it is submitted that the charge is made out.

11. 6. As each one of these matters is in controversy, it would be necessary to deal with them seriatim. But before doing so it would be convenient to set out in brief outline the case put forward by the respondent and by Bashir Ahmed to whom also notice was issued under Rule 6(1)(a). The respondent starts by denying all knowledge of who the partners of Fairdeal Motors were ; and the rest of the reply may be summed up as a denial of the allegations that he gave any direction for the payment of the advance. The respondent having in his own hand opened the ledger page and made an entry of a credit of Rs. 111/- on the first page of the ledger of Fairdeal Motors on 11-1-1961 at the opening function (the Bank account of the firm was opened on 12th January, 1961 vide document 20) which is explained by Bashir as a token of his father's blessings for the venture, the denial by him of knowledge of the extent of his son's interest in Fairdeal Motors sounds rather hollow and may be discarded. For the purpose of the charge it is sufficient if he knew that Bashir was a partner and this is not denied. The other denials I shall discuss in their proper place.

11.7. The case of Bashir Ahmed, dealing with the merits of the charge, may next be summarised. He states :

- (1) Two orders were placed with Fairdeal Motors on 7-1-1961 one for the supply of three chassis (two for Animal Husbandry Department and one for the Tawaza Department) and the other for the supply of spares for T.M.B. vehicles from the stock with the firm on "off the shelf basis". The firm asked for an advance of Rs. 1,50,000/- by letter of the same date, but by its communication dated 9-1-1961 Government paid an advance of Rs. 1,00,000/- only.
- (2) Tyres were supplied instead of truck chassis because the order was subsequently revised.
- (3) Government have most often made purchases from various dealers locally for getting expeditious delivery. In this connection he relies on (a) the reply of the Government supporting the advance, when an audit objection was raised to the advance now in question as irregular ; (b) the statistics of the quantum of local purchases of spare parts and other stores during the years 1960-61 to 1962-63 ; and (c) a statement of the Transport Commissioner recorded by the Public Accounts Committee—1963-64—in which

he said that this advance "was made to the firm on the advice of the Assemblers."

- (4) That in fact the firm made supplies for a value exceeding one lakh.
- (5) That his father had nothing to do with his obtaining this advance.
- (6) To show that he was not in any dire need of finance, he has annexed to his reply a statement of the Manager of the United Commercial Bank which would indicate that he enjoyed credit facilities under various heads totalling over Rs. 16 lakhs.

11.8. From the above it would be seen that the first matter in controversy is whether orders for the spares or the three chassis preceded the direction dated 9th January, 1961 by Mr. Raina to the Bank to pay Rs. one lakh to Fairdeal Motors. I do not accept the case of the Government that no orders were placed then and that these were brought into the file years later when an audit objection was raised. The two orders, one for the spares and the other for three chassis, are Documents 5 and 6 and both these are dated 7-1-1961. The serial numbers given to these two documents are 5987-88 and 5984-86 respectively. The serial number of the direction to the J & K Bank to make the payment of Rs. 1,00,000/- to M/s Fairdeal Motors (Document 2) is 5993-95 (the plural number being apparently due to the numbering of the several copies which were sent to different parties for their information).

11.9. Besides the above feature based on the numbering, there is a reference to the two orders for chassis and spares in the foot-note to Document 2 which shows that the orders must have been drawn up and were in existence on the date of Document 2.

11.10. The next question is when were the two orders despatched to Fairdeal Motors? It is here that the case of the Government that the orders reached Fairdeal Motors a considerable time after the payment of the money seems to be made out. As stated already, Documents 5 and 6 are the two orders—one for the supply of spare parts and the other for the three vehicles. It is seen from the peon delivery book—the extract of the relevant entries being Document No. 13—that the communications serially numbered 5984 and 5987 were delivered to Fairdeal Motors at 3-00 P.M. on 10th January, 1961, but in the despatch register (the relevant page being document 7), it is shown as if communications 5984-86 and 5987-88 were all despatched on the 7th January, the date "9-1-1961" in column No.2 of the register for 'the date of despatch' being corrected into "7-1-1961". The over-writing by which in the despatch register 9-1-1961 is converted into 7-1-1961 (8th being a holiday) is clear even to the naked eye but in order to prove that this was a fraudulent correction the Government have filed the other letters and communications bearing the other serial numbers in this register from 5980 onwards which all appear as having been despatched on the date 7-1-1961 as corrected. The documents bearing serial No. 5980-5983 which were documents numbers 8, 9, 10 and 11 are all dated 9-1-1961 and so it is clear that documents bearing serial No. 5984 and 5987 which were delivered

to Fairdeal Motors must have originally borne the date 9-1-1961 and that this has been corrected into 7-1-1961. That Bakshi Bashir Ahmed attaches some importance to the date 7-1-1961 is seen from his reply and from the documents which he has annexed thereto. In the course of his reply he has asserted that he received the order on 7-1-1961 and he has filed before me a copy of a reply from Fairdeal Motors to the Transport Commissioner also dated 7-1-1961 in which Bashir Ahmed for Fairdeal Motors acknowledges receipt of the two letters No. 5984 and 5987 both of the 7th January, 1961 for which the Transport Commissioner is thanked. The original of this letter is not to be found in the file and having regard to what I have stated as flowing from the despatch register and the peon delivery book, it is obvious that the copy of the letter now produced as Document No. 3 along with the reply is a spurious one, (fabricated for being produced at this enquiry).

11-11 Though I have thus found that there has been this improper correction in the register, it does not in my opinion advance the case of the Government as regard this allegation very much, because it matters little that the exact date on which the order was placed in the hands of Bakshi Bashir Ahmed was two days after the date the document bears. I have a suspicion that these corrections were made in the despatch register and to meet the audit objection regarding the pay order preceding the order for the supply. Even assuming the order was really drawn up on 9-1-1961, it would not in my opinion, make any difference except as indicating that the officials of the Department would even go to the extent of interpolating official records if they thought that there was need to do so. Document No. 2—the direction to the Manager, Jammu and Kashmir Bank Ltd. to pay Rs. 1 lakh was evidently drawn up on the 7th but that date was later altered into 9th as there are other notings on that page, but the fact that it was drawn up earlier would not very much matter because what is relevant is the date on which that payment order was despatched, though it is just possible that the two orders (documents 5 and 6) were got ready on the date they bear, namely, 7-1-1961, but they were despatched on 9-1-1961. Evidently the officers who drew up document No. 2 took care to correct the date to 9-1-1961, but failed to do that as regards the orders documents 5 and 6. It is, however, clear from the pay order drawn up by the Jammu and Kashmir Bank Ltd. that it was prepared only on 10-1-1961 and the payment was made on 13-1-61. If, as I have found, the order for the supply of the spares and the vehicles chassis was drawn up on the 9th and despatched the same day and the order to pay the advance of Rs. 1 lakh was also drawn up on the same day, the contention that the payment of the advance preceded the placing of the order is not made out.

11-12. The next question that arises is about the processing of these orders and of the need for the materials ordered. This has to be considered in two parts : (1) As regards spares ; and (2) as regards the vehicle chassis. As regards the spare parts there was undoubtedly no requisition from the Parts Manager, about the lack of these parts ordered in the store, no investigation either as to their being needed. In fact there is nothing which preceded this order to indicate that any step was taken to assess the need for any spares or spares of the type ordered, before the order was placed.

11-13. Coupled with this is the circumstance that simultaneously with the placing of the order, as large a sum as Rs. 50,000/- was paid as an advance. It is the payment of this advance that is relied on by the Government as proof that Government funds were utilised improperly in order to afford finance to the newly re-constituted firm of Fairdeal Motors which had fallen to the share of Bakshi Bashir Ahmed. Now as regards the payment of this advance it is the case of the Government that this was without precedent and against all rules. In this connection the explanation of Bakshi Bashir Ahmed who states that it was practically a sale of the spare parts, being an order for goods on "off the shelf" basis notwithstanding that this description was derived from the terms of the order may be put aside as it does not fit in with the facts. It is no doubt true that in document No. 5 which is the order for these spares it is stated that the rates applicable were to be those on "off the shelf" basis and it is insisted that the supplies should be executed immediately, the bills being forwarded to the Department for arranging payment thereof. (The spare parts were not sold "off the shelf" but have been supplied to the Government gradually during the course of more than a year.). Another point which is urged by Bakshi Bashir Ahmed is that the Government were purchasing parts from local dealers in increasing quantities as the years rolled by and in support he has furnished certain figures indicating the increased purchases as years went by. But it is somewhat strange that notwithstanding this answer saying that there was nothing unusual about the order with him, Bakshi Bashir Ahmed does not choose to say that in the case of other purchases from the local dealers any advance was paid long ahead of the supply. If the Government purchased from a local dealer and paid cash across the counter or on delivery, that would furnish no analogy to the nature of the transaction which he is seeking to justify. There is a third explanation offered by Bakshi Bashir Ahmed and this is based on the reply by the Transport Commissioner before the Public Accounts Committee (in 1963-64) when the transactions now under examination were being considered, that the order was placed at the advice of Assemblers. This suggestion by the Transport Commissioner does not appear to be true firstly because when the matter was under correspondence with the Audit Department, no such explanation was offered (vide Document No. 18). When the Transport Commissioner made the statement before the Committee, the Accountant General required that letters of the assemblers might be made available to Audit and the Transport Commissioner promised to do so. This was, however, never done and there is now on the file no letter from the Assemblers to that effect. There is nothing on the file to indicate any correspondence with the Assemblers—TELCOS—in which a suggestion of the type was contained. The explanation of the Transport Commissioner seems to have been invented by him merely to get over the awkward situation which confronted him when facing the Public Accounts Committee. What is on record, however, is quite to the contrary. In or about September 1960 the Deputy Transport Controller, Mr. Jamwal, had a discussion with a representative of TELCOS regarding supply of spares. Subsequently, on the 28th September, 1960 TELCOS wrote a letter to Mr. Jamwal in which the Company set out the terms on which their authorised dealers would deal with the State Governments in the matter of the supply of spares. It was there stated that the dealers would allow certain discounts—15% of the

retail price for all spares and in respect of certain of the parts a slightly different concessional rates, adding—

“These terms are subject to the stipulation that payment of our dealers bills will be made within one month from the date of submission of bills”.

And this letter, which is document No. 16 in this allegation had been circulated to the several Departments for their information as seen from the notings on it. In view of this communication from TELCOS with which the Transport Commissioner must have been very familiar, it appears to me to be an inescapable conclusion that the payment in advance was not a mere irregularity but was designed with an ulterior purpose to help Bakshi Bashir Ahmed with finances for the newly constituted firm of which he was the proprietor and which was started from 1-1-1961.

11-14. The case in regard to the supply of vehicles presents even more curious features. In Document 6 which is the order for the vehicles placed with Fairdeal Motors, the foot-note contains a direction for copies being despatched (1) to the Director, Animal Husbandry, Jammu for information ; and (2) to Controller Tawaza Department, Jammu, for information with the addition of this sentence : “The demand for the chassis was made by his Deputy Controller Tawaza, Srinagar, verbally”. There is nothing in the file to indicate any requisition for a vehicle chassis from the Director of Animal Husbandry and it is admitted that so far as the Tawaza was concerned it was a verbal request on the telephone that was made for obtaining a vehicle. The files of the Tawaza do not indicate the need for a vehicle chassis at that point of time nor does it contain any indication confirmatory of the verbal order that is referred to by the Transport Commissioner. That the demand of the Animal Husbandry Department and the Tawaza Department referred to by the Transport Commissioner in Document 6 was not true is borne out by the further circumstance that the order for these vehicles was soon converted into one for the supply of tyres to which reference will be made later. It does not, therefore, appear unreasonable to suppose that the reference to the supply of vehicles was not intended really seriously but was merely an excuse to justify on paper the payment of the advance. It is stated in document No. 6—the order for the vehicles—that the chassis were to be supplied from incoming arrivals of these three vehicles from Jamshedpur. It is not in evidence as to when exactly Fairdeal Motors obtained the type of chassis which were ordered from Jamshedpur but it is clear that no attempt was made by Bakshi Bashir Ahmed to supply these chassis, though he had been paid Rs. 50,000/- as advance. But the explanation for non-delivery of these vehicles is that the order for the supply of the vehicles was later changed into one for the supply of CEAT tyres. Admittedly there was no written order for the supply of these tyres though as seen earlier the order for the vehicles was in writing. If the exact date of this order were known, it would be possible to ascertain whether Fairdeal Motors obtained from TELCOS vehicle chassis of the type ordered in Document No. 6. But in the absence of the precise date on which the order for the tyres was placed, it is not possible to explore this further avenue for determining whether the story regarding the truth of the original order for vehicles being genuine. As regards the order for

the tyres, again there was no processing, no appraisal of the need for the number of tyres supplied and such other details.

11-15 There was some suggestion by learned counsel for the Government as regards the price of both the spares as well as the tyres which were supplied, but in the absence of more specific details I am unable to attach any importance to the suggestion that the Government had overpaid for these supplies.

11-16 The net result of the above discussion is that the Government have established that the firm of Fairdeal Motors of Bakshi Bashir Ahmed was paid an advance of Rs. 1 lakh irregularly and improperly for supplies of spares and tyres which were delivered long after. In this connection the date of the payment of Rs. 1 lakh has some significance—this was almost contemporaneous with making available to this firm of about Rs. 2½ lakhs by purchasing 9 Bedford trucks from Kashmir Motors and Kathua Motors for the benefit of this firm which is the subject-matter of Allegation 23. Both of these, having regard to the intrinsic nature as well as the sequence and point of time obviously intended to place sums of money in the hands of Bakshi Bashir Ahmed to carry on the business of Fairdeal Motors which had fallen to his share in the family partition.

11-17. In regard to this part of the case Bakshi Bashir Ahmad has stated in his reply that on 1st January, 1961 Fairdeal Motors had over Rs. 16 lakhs of bank credits available to them and there was, therefore, no need for him to obtain this sum of Rs. 3½ lakhs (Allegations 23 and 24). I have already discussed them when dealing with Allegation 23 the tenability of this claim that he was flushed of money on that date. I do not, therefore, consider it necessary to re-examine this aspect of the case while dealing with this allegation. The findings I have recorded earlier would suffice for this purpose.

11-18. The next and the most important question that remains for consideration is whether the charge has been brought home to the respondent. It is stated by the Transport Commissioner Mr. S. K. Raina in the affidavit that he has filed, that he made this advance of Rs. 1 lakh to the firm of Fairdeal Motors at the direction of the respondent. But Bakhshi Ghulam Mohammad has denied this in his reply. Since Mr. Raina has not been called as witness and subjected to cross-examination, I do not propose to attach any value to his statement in the affidavit. If this affidavit is put aside there is no direct evidence of any direction by Bakhshi Ghulam Mohammad because there is no note or other paper in the file indicating such direction. Express direction by him not being established, the question is whether it is established that he had knowledge of the transaction and had either consented to or acquiesced in the same. This has to be gathered from the proved facts and circumstances of the case. Though the respondent disclaims any knowledge of the precise dispute between the parties which led to the arbitration proceedings and the terms of the award, I am not prepared to believe that statement. The persons who were involved in those disputes and in the arbitration proceedings were among others his son and daughter and his brothers. In dealing with a similar denial in allegation 23, I have referred to the evidence which establishes his knowledge and there is no need to repeat the same. A new account was opened for this firm of Fairdeal Motors by Bakhshi Bashir Ahmed

claiming to be the sole proprietor of the business on 12th January, 1961 with the United Commercial Bank Ltd. and the sum of Rs. 1 lakh received from the J&K Bank was deposited in this account on 13th January, 1961. If as I have pointed out the foundation stone of this business had been laid by the respondent and it received his first contribution as a blessing, it is not unreasonably to suppose that just before the start of this business on the 9th or 10th steps had been taken to put in its funds for carrying on its operations. In other words the "blessing took the concrete form of providing working capital of Rs. 3½ lakhs for the new management—(Allegations 23 and 24). The irregularities in respect of these orders have already been set out in full and even Bakhshi Bashir Ahmed is unable to suggest any rational explanation for them. As late as 22nd December 1959 by an order passed by the Transport Controller himself (vide Document No. 15 No. C/1/VI/TC) the duties of the several officers in the Department had been clarified. It was the duty of the Parts Manager to arrange for the procurement of spares, accessories, oils, lubricants, tyres etc. from suppliers as well as local purchases of emergency items to clear held up jobs, indenting, provisioning, receipt and issue of plant requirements but in the present case the purchases had been made without any requisition from the Parts Manager or on his initiative. One has, therefore, to answer the question as to why there was this by-passing of the normal procedure both as regards the ascertainment of the needs and the terms of the purchase. Again as regards the order for the chassis, one wonders why a fictitious statement was made as regards the requirements of the Department which apparently ceased to be required after some little time. If it could be suggested that the Transport Commissioner had some motive—proper or improper—for benefiting Bakhshi Bashir Ahmed who was the beneficiary of this irregular and improper advance, no inference might be drawn that some other persons or authority had induced him to act in this manner. No motive, however, is suggested and this leads to the inescapable conclusion that the driving force for this improper act on his part by which the State moneys were made available to Bakhshi Bashir Ahmed could have been no other than the one who was interested in Bakhshi Bashir Ahmed and who held the official position of the respondent. I, accordingly, find that Allegation 24 which is intimately connected with Allegation 23, is also proved to my satisfaction.

11-19. The financial advantage gained by Bakhshi Bashir Ahmed by reason of this improper advance of Rs. 1 lakh falls next to be considered. Here, as in regard to Allegation 23, the Government obtained the value for their money in the shape of spare parts and tyres. The impropriety consisted in making a payment in advance and following in this respect the basis I have adopted in regard to this matter in Allegation 23, I consider that the proper method of evaluating the financial advantage would be to hold that the firm obtained any interest-free loan for six months out of this transaction. Calculating the interest at 6%, the net advantage derived by the firm by this irregular advance would be Rs. 3,000.00. In view, however, of this sum being reflected in the profits of Fairdeal Motors for 1961-63 which have been taken into account in assessing the financial advantages secured by the abuse in Allegation 16, I am omitting it as an independent item.

12.1. The next charge in the Transport group in which it is alleged that Bakshi Bashir Ahmed obtained undue favour from the respondent is Allegation 25.

12.2. Allegation 25 reads thus:—

"In the year 1960 to 1963, by the abuse and exploitation of Bakshi Ghulam Mohammad's official position undue pecuniary advantage was secured for M/s Nav Bharat Transporters, a concern owned by Bakshi Bashir Ahmed, his son. This firm held contract for transporting T. M. B. vehicles from Jamshedpur to Srinagar for the Transport Department of the J & K State but the vehicles were actually delivered at Jammu though payment for delivery at Srinagar was made to the firm with the connivance of Bakshi Ghulam Mohd."

It will be clear on a reading of the allegation as notified that the undue pecuniary advantage which is stated to have been secured for the Nav Bharat Transporters was in the manner set out in the second sentence of the notification.

12.3. In the statement of the case are stated certain facts which are not in dispute and which are fully supported by the documents filed and these I shall first set out. By a contract entered into between the Government of Jammu & Kashmir and the TELCOs, the latter undertook the transportation from Jamshedpur to Srinagar of the vehicles ordered by the Government through their dealers the Fairdeal Motors, Srinagar. Under the original arrangement which was in force in 1960 and in the early part of 1961, the amount of "drive away charges" i.e. the cost of transporting the chassis or vehicles that were purchased, from Jamshedpur to Srinagar—was Rs 695/- per vehicle. This was increased to Rs. 786/- per unit on and from 10th November, 1961 to Rs. 803/- from 29th September, 1962 and again to Rs. 842/- from 5th June, 1963. These rates were for delivery of the vehicles at Srinagar and they were to be paid along with and part of the price. It is stated, and there is no dispute about it either, that if the vehicles had to be delivered not at Srinagar but at Jammu, TELCO would have charged about Rs. 100/- less per vehicle. The case of the Government is that 314 vehicles ordered by them, were delivered at Jammu but the charge for delivery recovered from them was on the basis of their having been delivered at Srinagar and regarding this also there is no dispute. It is further alleged that the contract for transporting the vehicles from Jamshedpur was allotted by the TELCOs to a firm called "Nav Bharat Transporters" stated to be owned by Bakshi Bashir Ahmed and that by reason of the exploitation of the official position of his father the respondent Bakshi Bashir Ahmed was able to obtain payment of this extra remuneration by reason of which the State Government was put to a loss of about Rs. 31,400/-, at the rate of Rs. 100/- per vehicle.

on the 314 vehicles. I shall be referring to the details of the charge and the manner in which it is sought to be proved later, but at this stage it is necessary to mention the defence that is set up by Bakshi Bashir Ahmed which has also been adopted by the respondent.

12.4. The main defence of Bakshi Bashir Ahmed is that Nav Bharat Transporters who admittedly held the contract with TELCOs for transporting the TMB trucks from Jamshedpur and who derived this financial advantage was a partnership firm consisting of persons other than himself and that he had no interest at all in the firm. In support of this statement he has filed the copy of a partnership deed dated 10th July, 1961 executed between Abdul Rehman son of Abdul Ghani, Nazir Ahmed Khan son of Ghulam Mohammad Khan and Abdul Majid Khan son of Ghulam Mohammad Khan—the two latter being real brothers. The deed of partnership recites that the parties had started transport business, that Abdul Rehman had been able to secure a drive-away contract from TELCOs for T. M. B. trucks from Jamshedpur to Srinagar and that the partnership was formed for the purposes of carrying out this contract. Abdul Rehman was to have a half share in the partnership while the other half was divided between the two other partners equally. There can be no doubt that if the truth of this partnership is made out, Bakshi Bashir Ahmed had nothing to do with it and the charge in the allegation as notified would have no legs to stand on. There are other defences raised both by the respondent and by Bakshi Bashir Ahmed on what might be termed the merits, but as I consider that the determination of the question of Bakshi Bashir Ahmed's interest in the business known as Nav Bharat Transporters is both crucial and arises by way of a preliminary issue, I consider it convenient to deal with it first.

12.5. In view of this positive case raised by the defence, regarding the ownership of the business run under the name of Nav Bharat Transporters, the Government were permitted to file a statement in answer thereto and also adduce such evidence—documentary and otherwise—in support of their case that Bakshi Bashir Ahmed was interested either as sole proprietor or otherwise in this concern. In pursuance of this permission they have filed a statement as well as a number of documents to which reference will be made during the course of the discussion.

12.6. In support of his case that Nav Bharat Transporters was a business run by the three partners—Abdul Rehman, Nazir Ahmed Khan and Abdul Majid Khan—and that he had nothing to do with it, Bakshi Bashir Ahmed has contented himself with filing (1) his own affidavit in support of this version; (2) a copy of the partnership deed dated 10-7-1961 already referred to and (3) an affidavit of Abdul Rehman

who claims to be the principal partner in Nav Bharat Transporters. The case of the Government, however, is that this was a simulated partnership, brought about by Bakshi Bashir Ahmed for evading income-tax and that the so-called partners had really no interest in the concern and that Abdul Rehman who was none other than Bashir Ahmed's maternal uncle was acting for him, the either two so-called partners being merely dummies and that the entire concern was really a benami one run solely for his benefit.

12.7 In view of the fact that there exists a deed of partnership, there is a presumption in favour of the ostensible state of circumstances being real, unless the contrary were proved. I propose to examine the evidence adduced by Government and ascertain how far they have been able to dislodge this presumption and establish their case that Bakshi Bashir Ahmed was the real owner of the concern run in the name of Nav Bharat Transporters. The first circumstance that is relied on by Government in this connection is as regards the position and status of the persons who are stated to constitute the partners of this firm under the deed of July 1961. Abdul Rehman who was the principal partner and was entitled to a 50% share in the partnership is shown by additional document XXIII (extract from the character roll filed with the statement of case answering Bakshi Bashir Ahmed's positive contention regarding Nav Bharat Transporters) to have been recruited as a Head Constable on 1st April, 1956. He is shown to have been in service from that date till July 1964 when he resigned from the service on grounds of illhealth while still as a junior grade head constable. His resignation was accepted by the Superintendent of Police and he was thereupon discharged from service. He is shown to have been continuously on duty from 1-4-1956 to the date of his resignation and to have received regular promotions. Having started on a salary of Rs. 50/- p. m. he was receiving a salary of Rs. 110/- p. m. when he resigned. It is obvious that in view of these promotions in the normal course, he should normally have been continuously in active service and should have discharged the duties of his office during the entire period. In particular it is seen from the above extract that he was promoted by an order dated 29th June, 1960 to receive a salary of Rs. 66/- p. m. from 1st April, 1960 and during the next year he was similarly promoted to receive Rs. 70/- p. m. and the year after that to Rs. 74/- p. m. by order dated 9th May, 1962. On 2nd July, 1963 he was promoted to the next scale (the pay of the services meanwhile having been revised by Government Order in 1962) to receive a salary of Rs. 105/- p. m. from 1st April, 1963. In view of his official position he could not according to his service rules engage in any business but even if he did so it must have been clandestinely and could not have the time to do any active work. What his financial position was at the time of his appointment according to him is entered in his character roll and it is there stated that his property—movable and immovable—would be worth about Rs. 3,000/-. Certainly the business of a transport contractor involved

a much greater outlay than this extent of property could have supported and that is certainly a circumstance which would show that his participation in it could if at all have been only nominal.

12.8. As regards the two others who are said to be partners—Nazir Ahmed Khan and Abdul Majid Khan—both of them are seen to be employees of Fairdeal Motors. Abdul Majid Khan has filed an affidavit in which he says that he joined the service of Fairdeal Motors in 1959 as a machanic on a pay of Rs. 75/- per month, that after two years his brother Nazir Ahmed Khan also joined service as a mechanic and that their salary was raised to Rs. 130/- after some time. He further states that he resigned from the service of Fairdeal Motors in 1964 and started an independent business. The statement of this deponent as regards his being an employee of Fairdeal Motors is corroborated by entries in the ledger of Fairdeal Motors of the year 1963 which having been seized by the Police are before the Commission. On page 286 of the ledger for 1963 there is the account of Abdul Majid Khan, Scooter mechanic. It shows that he was given a loan on the 11th April, 1963 of Rs. 3,000/- and a further loan of Rs. 500/- on the 18th July, on that date making a total of Rs. 3,500/-. In the course of his affidavit Abdul Majid Khan speaks about this loan and to the fact that amounts were deducted from his salary towards this loan. This also is made out by the entries on this page of the ledger. Page 285 of this ledger contains the account of Nazir Ahmed Khan who is described as a Calibration Mechanic. In this account also the loan of Rs. 3,000/- made on the 11th April and a further loan of Rs. 500/- given on 18th July are to be found and this is exactly what Abdul Majid Khan says in his affidavit. The account also shows that from his salary amounts were deducted. Abdul Majid Khan further adds in the course of his affidavit that neither he nor his brother were partners in Nav Bharat Transporters but as the deponent has not been called as a witness, I will not be acting on this denial contained in his affidavit.

12.9. Mr. Khambata learned counsel for the Government sought to rely on two sworn statements made before the Income-Tax Officer, Special Circle, on 9th July, 1965 by Nazir Ahmed Khan and Abdul Majid Khan on 3rd August, 1965 (Additional documents XIX and XX respectively) in the course of which these two persons stated on oath that they were employees of Fairdeal Motors, had nothing to do with the firm Nav Bharat Transporters as partners or otherwise and that their signatures had been taken to certain papers including some income-tax returns of the firm at the instance of an income-tax practitioner appearing for Baskhi Bashir Ahmed and the firm. Of course, if the facts stated in these statements are accepted, the case of the Government would be established, but I ruled out these documents as evidence on the ground that they were inadmissible in these proceedings. Mr. Khamabata urged in reply to my questions as to how they would be

relevant, that they would be admissible under Section 32 of the Indian Evidence Act or some principle analogous to it on the ground that these were statements against a person's interest, in that the two had disclaimed all connection with a partnership which had made profits and on which it had been assessed to income-tax. I, however, consider that Section 32 is not the appropriate provision apart from the opening words of that Section not being satisfied, but really Section 33. Mr Khambata frankly conceded that he could not bring these statements within the opening words of that provision. Consequently I am omitting these sworn statements from consideration and I shall take into consideration only the other admissible evidence which is relied on to establish that Nav Bharat Transporters was merely a name under which Bakshi Bashir Ahmed was carrying on the business of transporting T. M. B. vehicles from Jamshedpur to Srinagar.

12.10 The next circumstance relied on by the learned counsel for the Government was that Nav Bharat Transporters had no independent office premises but that it was carrying on its business only from the office of Fairdeal Motors. Additional Document No. XXII is an "instruction book" maintained in the Head Post Office at Srinagar. On page 63 of this "instruction book" for 1961 at serial No 5 dated 4.5.1961 is to be found the instructions from the Nav Bharat Transporters, Residency Road, Srinagar according to which mails addressed to them were instructed to be delivered at the office of Messrs Fairdeal Motors Workshop, Residency Road Srinagar. The contents of this document and the entry to which I have adverted are supported by the affidavit of Prithvi Nath Kaul who is a deposit clerk in the Head Post Office. In this affidavit he also mentions that in accordance with the departmental rules the original instructions of addressees are destroyed after three months. It is to be noticed that though the partnership deed is dated 10th July, 1961, the instructions to the post office are of date 5.5.1961 which shows that the business under the name Nav Bharat Transporters was in existence months before the partnership deed.

12.11 It was next urged that Nav Bharat Transporters had no separate staff but that their accounts were being maintained and correspondence attended to by the staff of Fairdeal Motors (vide affidavit of Pandit Amar Nath Sadhu). So far as this statement is concerned, the documentary evidence in support thereof consists of the fact that the ledgers of Nav Bharat Transporters which were summoned from the Income-Tax Officer, Special Circle, do not indicate any payment towards the salary of any staff. The statement, therefore, appears very probable if not proved.

12.12 Nav Bharat Transporters opened an account with the Central Bank of India which was to be operated by Abdul Rehman. This might indicate that the firm had an independent

existence in that the moneys belonging to it were kept separate from the moneys belonging to Bakshi Bashir Ahmed, thereby indicating a different ownership. But a close scrutiny of these accounts and of the cheques drawn together with the manner of their disposal and their destination, however, shows that most of the amounts were paid into the account of Bakshi Bashir Ahmad or utilised by him for his own purpose. Additional Document No. II is a cheque dated 12.12.1962 on the Central Bank of India, Srinagar in favour of Mr. Mohd. Ramzan Mir. It shows on its back an endorsement in favour of Ali Mohd. Raha, signed by the payee. It is the case of the Government that this Rs. 12,000/- was part of a Rs. 24,000/- loan made to Mohd. Ramzan Mir by Bakshi Bashir Ahmed, the other Rs. 12,000/- having come from Bashir himself by a cheque on the United Commercial Bank in the Fairdeal Motors' account. The case in regard to this loan of Rs. 24,000/- is stated by Mohd. Ramzan Mir in an affidavit under Section 131 of the Income-Tax Act which he filed before Income-Tax Officer, Special Investigation Circle on 29th July, 1965 (additional Document III). In the course of this affidavit he says that by obtaining finance from the Kashmir Financial Corporation he acquired a Chevrolet vehicle on a hire purchase agreement but that as he had defaulted the vehicle was seized by the financier. Thereafter he got Ali Mohd. Raha to pay Rs. 24,000/- and secured the release of the vehicle. Ali Mohd. Raha thereafter wanted him to repay this amount but as he was not in a position to do so, he approached Bakshi Bashir Ahmed who gave him two cheques, one the endorsed cheque (additional document No II) and another his own on the United Commercial Bank each for Rs. 12,000/- and that thus Raha was paid. He proceeds to explain how the vehicle was subsequently dealt with and winds up by saying that he still owed some money to Bakshi Bashir Ahmed on this loan of Rs. 24,000/-. In view of what I have stated, already, this affidavit or sworn statement filed before the Income-Tax Officer is not relevant in these proceedings and am, therefore, dismissing it from consideration. But there are circumstances from undisputed evidence which lead to the inference that the story of a loan is true. Now the first circumstance to be referred to is that in the counterfoil of the cheque issued to Mohd. Ramzan Mir the object of the cheque is noted as "loan account". Now in the ledger maintained by Nav Bhart there is no entry indicating that any loan was made to Mohammad Ramzan or that any sum was due from him. The cash book of the firm does not reflect the contents of this cheque either the foil or the contents of the counterfoil. It shows a withdrawal of cash on the 1st December 1962—11 days before the cheque was drawn and the counterfoil of the cheque-book which has been obtained after summons from the Income-Tax Officer shows no withdrawal on the 1st December. The amount tallies with the cheque (Document No. II), namely, Rs. 12,000/-. Disposal of this cash is to be found in the cash book on page 18 and there it reads as if Rs. 4,500/- had been paid to Nazir Ahmed Khan and Rs. 4,500/- to Abdul

Majid Khan and the balance disposed of in a different fashion to make up the total of Rs. 12,000/- shown to have been withdrawn. In line with this entry, the ledgers of these two individuals are shown as being credited with the receipt of this Rs. 4,500/- each. I have already pointed out that in fact the cheque which is one "to order" ("bearer") in print being struck out) was endorsed in favour of Ali Mohd. Raha who had it collected through the National and Grindlays Bank and credited it to his own account. This shows that the entry in the cash book of a cash withdrawal is false and, of course, the method of the disposal of the Rs. 12,000/- is also blatantly false. The noting on the counterfoil that it was for a loan account could only mean that it was a loan to Ali Mohammad Raha by somebody else, not by Nav Bharat Transporters. We have the further circumstance that on the same date i.e. 12-12-1961 Bakshi Bashir Ahmed drew a cheque in favour of Raha also for Rs. 12,000/- which obviously shows that there is some connection between the two amounts. Document No. VI is another cheque by Nav Bharat Transporters drawn in favour of Bakshi Bashir Ahmed "or order" and bearing an endorsement on its face "Payee's A/G only" and also bears the signature of the United Commercial Bank, Srinagar Branch in token of collection on 1.2.1963 and is for a sum of Rs. 13,799.66 the cheque being dated 31.1.1963. This cheque is found to have been credited in Bakshi Bashir Ahmed's account (FairDeal) in the United Commercial Bank on 1.2.63. Notwithstanding this the entry in the cash book of Nav Bharat reads as if on 13.1.1963 i.e. 18 days before the cheque was drawn Rs. 13,799.66 had been withdrawn in cash and had been paid to Bakshi Bashir Ahmed in whose ledger page it is entered as amount paid to him in cash. The only object of the entry in the cash book of Nav Bharat Transporters of a cash withdrawal could be to keep back the name of Bakshi Bashir Ahmed from their books except as a creditor. Of course, this amount has not been re-paid.

12.13 The next cheque which was referred to is one dated 27.12.1963 for Rs. 5,000/- which is a cash withdrawal on 7.1.1964 (Document VIII). I do not attach importance to this cheque as assisting the case of the Government very much except that the cash in relation to this withdrawal is seen to have been distributed (vide page 33 of the cash book) as personal advance to the partners—Rs. 2,000/- each to Abdul Majid Khan and Nazir Ahmed Khan and Rs. 1,000/- to Abdul Kehman. The proportion of the payment does not accord with their interest in the partnership and I have no doubt that these are merely fictitious entries of advance to the so-called partners, but in the absence of any positive evidence to show that the amount of this cheque has gone into the account of Bakshi Bashir Ahmed, I do not attach much value to this cheque.

12.14 The next amount withdrawn from the account of Nav Bharat Transporters was a sum of Rs. 10,000/- by a cheque

drawn on 15-4-1963 in favour of New Bharat Transporters (Document X). New Bharat Transporters was, as would be seen from the discussion of the matters in relation to Allegation 27, a firm in which Bakshi Bashir Ahmed was interested either as sole proprietor or at least as a partner if his story be true. But in regard to this cheque also I am unable to attach much value because Abdul Rehman who drew this cheque on behalf of the Nav Bharat Transporters is also stated to be a partner whether real or ostensible in New Bharat Transporters. No doubt, if Abdul Rehman had nothing to do with Nav Bharat Transporters for the reason that during all the relevant time he was in Government service as a Head Constable actively on duty, he could not be a partner of New Bharat Transporters either and the payment to New Bharat Transporters would virtually be a payment to Bakshi Bashir Ahmed who would be the person interested as sole proprietor in New Bharat Transporters. Any way, some significance does attach to the circumstance that the moneys of Nav Bharat Transporters in which according to Bashir Ahmed there were other partners also besides Abdul Rehman, finds their place into New Bharat Transporters in which those other partners had admittedly no interest, of course, there has been no repayment of this sum, thus negating this having been by way of accommodation.

12.15 Additional document No. XII is a bearer cheque in favour of Bakshi Bashmir Ahmed for Rs. 2,000/- which was received by him in cash. The next cheque (Document No. XIV) is perhaps of more significance. It is a bearer cheque dated 29-2-1964 for Rs. 30,000/-. The cash book entry in relation to it reads as if it had been paid to Col. Qadir on 2.3.1964 on which date it was withdrawn from the Central Bank but the counterfoil of this cheque provides interesting reading. It runs-

"Cash for Income-Tax Dept." and then follows an account :

"B. Sahib	12,000/-
Gbulam Qadir	1,500/-
Bakshi Abdul Rashid	6,000/-
Fairdeal Motors	10,500/-

At the back of the cheque is the signature of Mohammad Amin who apparently went to the bank to collect the cash on behalf of the Nav Bharat Transporters. It is clear that the cash book does not reflect the true position as is shown by the entries on the counterfoil and that the amount was utilised for the payment of Income-Tax of Bashir Ahmad, his relations and his concern. The next relevant withdrawal by cheque is (Document No. XVI) dated 30-11-1964 for Rs 9,000/-.

The Counterfoil reads:

"Cash	9,000.-
For Income-Tax	7,322.96
Fairdeal	1,677 04
	9,000.00"

It is obvious that this sum has gone for the payment of income-tax of Bashir Ahmad and of the Fairdeal Motors. Then we have two counterfoils without the cheques—one dated 5-5-1965 (Document XVII) showing it as a cheque for cash withdrawal of Rs 4,000/- for Fairdeal Motors, Srinagar, the other No. XVIII dated 13-6-1964 also a cash withdrawal of Rs. 2,747/- for the benefit of Fairdeal Motors.

12.16 It is seen from an examination of the cash book of the firm which was obtained from the Income-Tax Department, that immediately a substantial credit was available in the accounts of the firm, a cheque was drawn which has been utilised for the benefit of Bakshi Bashir Ahmed or one of his concerns. It is interesting to notice that the total amount withdrawn from the Central Bank account of Nav Bharat Transporters and which has been utilised for the benefit of Bakshi Bashir Ahmed or Fairdeal Motors is about Rs 89,000/- (being the total of the cheques documents II, VI, VIII, X, XII, XIV, XVI, XVII and XVIII). Mr. Khambata, therefore, is well founded in his submission that the proper inference to be drawn from this state of the accounts is that the business was really that of Bakshi Bashir Ahmed and run for his benefit though Abdul Rehman was signing the cheques ostensibly as a managing partner operating on the accounts.

12.17 The next circumstances on which reliance was placed as pointing to the same conclusion was the fact that Abdul Rehman in whose name the drive away contract was obtained from TELCOs was recommended for this appointment by Bakshi Bashir Ahmed. Abdul Rehman wrote a letter to TELCOs offering himself for the contract to transport the vehicles from Jamshedpur to Srinagar. In this letter Abdul Rehman claimed that he had "exrecience" of this work and would perform it to the satisfaction of TELCOs. This was forwarded to TELCOs by Bakshi Bashir Ahmed on 28th April, 1961 along with a covering letter of his own in which he also confirmed the experience of Abdul Rehman to perform the job of transporting these vehicles. I am not pausing to comment on these statements regarding the "experience" of Abdul Rehman in this business, seeing that Nav Bharat was started only for running this "drive away" contract and it is nobody's case that Abdul Rehman was in any business before. The story of Bashir Ahmed that he had nothing to do with Nav Bharat Transporters is seen to be untrue. I might mention that the letters to TELCOs referred to above were obtained from the file of the Income-Tax Officer, Special Investigation Circle, who was summoned to produce all the papers relating to Nav Bharat Transporters—since Abdul Rehman when summoned to produce them replied stating that they had been taken away by the Income-Tax Officer.

12.18 In this connection reference may also be made to certain correspondence between Nav Bharat Transporters and the Indian Oil Company which has been filed in support of the charge

contained in Allegation 27. Document No. 23 in that Allegation is a letter dated 15th March, 1963 from the Branch Manager of the Indian Oil Co. Ltd. to *Nav Bharat Transporters*, Residence Road, Srinagar. On the same day *Nav Bharat Transporters* acknowledged receipt of this letter as if addressed to them and replied saying:

"We beg to assure you that we can arrange an initial number of six tankers immediately which could be pressed into service as and when needed at the rates governing transportation of petroleum products of other companies operating in this area."

When, it is admitted that Bakshi Bashir Ahmed was interested in new Bharat Transporters though the circumstances in which he claims to have obtained this interest as detailed in his reply to Allegation 27 is interesting reading and will be dealt with when examining that allegation, but what is, however, relevant in the present context is that the letter addressed to *Nav Bharat Transporters* is treated in the opening words of Document 25 (New Bharat's reply) as one addressed to them, which shows the identity of the two firms.

12. 9. Some slight reliance was placed on the interest stated to have been evinced by Bakshi Bashir Ahmed in getting the receipts for the delivery of the vehicles made out by the Transport authorities as if the vehicles were delivered at Srinagar whereas actually they were delivered at Jammu and in this connection reference was made to the affidavits of certain Transport officials, for example Mr. Vaishnavi, the Parts Manager. These statements as to the part played by Bashir Ahmed in obtaining these receipts and the conversation stated to have taken place then, have been denied by Bashir Ahmed and in the absence of their being called as witnesses to substantiate their assertions I am not prepared to act on these statements in the affidavits filled on behalf of the Government. Besides Bashir Ahmed as the dealer who supplied the vehicles was vitally interested in obtaining these receipts because until their delivery was acknowledged and he could produce the receipts therefor, he could not obtain complete acquittance from either the company or the Government, and if he pressed for the early return of the delivery receipts (vide Document 21 dated 24th October, 1961), it was only natural and could have been for the protection of his own interests. It is worth mentioning that in Document 21 Bashir Ahmed himself refers to the delivery of the vehicles at Jammu which shows that he was not averse to acknowledging that fact. If so, even if in this connection Bashir Ahmed met the Transport officials, their statements regarding this conversation with Bashir Ahmed in the course of which Bashir Ahmed is said to have demanded receipts indicating delivery of the vehicles at Srinagar when they were delivered at Jammu, does not sound very probable.

12.20 In view, however of the other circumstances I have narrated earlier, I am clearly of the opinion that the Government have established beyond doubt that Nav Bharat Transporters was a concern owned by Bashir Ahmed, and that the so-called partners were merely his dummies.

12.21. Coming now to what might be termed the merits of this charge the questions raised by the allegation may be considered under two heads: (1) Was any undue pecuniary advantage gained by Nav Bharat Transporters. (2) Was this advantage secured by the abuse or exploitation of the official position of the respondent

12.22. As regards the first of these, it is found to be clearly made out and I find accordingly. That at least 314 vehicles (I say this because it is found that there were quite a few more) were delivered at Jammu is not in dispute; and I do not, therefore, think it necessary to set out the documents under which the deliveries were made. Nor is it disputed that Nav Bharat Transporters obtained payment from TELCOs on the basis of the delivery having been made at Srinagar. According to the terms of the contract between the Jammu & Kashmir Government and TELCOs, the price charged for the vehicles sold to the former included the "drive away charges". Paragraph 10 of Document 2—letter of the TELCOs to the Transport Commissioner dated 22nd May, 1961 stated "This—(the drive away charge which at the date was Rs 695/- per vehicle) includes the cost of drive away from Jamshedpur to Srinagar as also charges for temporary registration and transit insurance premium". This figure was raised from time to time. Thus from 10th November, 1961, the rates for transit insurance having increased, the delivery charges underwent an upward revision to Rs. 786/- per vehicle and so on from time to time till it stood at Rs. 842/-. I am not repeating the details of these increases, because what is of relevant is only this, that if the cost of transport had been calculated on the basis of the vehicles being delivered at Jammu and not at Srinagar, there should have been approximately a reduction of Rs. 100/- per vehicle. Before, however, proceeding further it is interesting to note the criminal method employed by Nav Bharat Transporters to obtain from the TELCOs charges based on delivery at Srinagar. In stating this, I am basing myself entirely on undisputed documentary evidence.

12.23. Immediately on receipt of the vehicles at Jammu, the Transport officers sent Fairdeal Motors and acknowledgement noting therein the defects noticed—vide e.g, document 5 dated May, 1961, document 7 dated 10th June, 1961 and document 9 dated 29th August, 1961. Possibly as a result of the presence of the defects in several of the vehicles of which delivery was taken, the Transport authorities had not promptly returned forms in triplicate which were handed over to them with their signature the company's receipt, along with the 'vehicles, signing

the same in token of the receipt of the vehicles. The consequence was that Fairdeal Motors wrote a letter to the Deputy Transport Commissioner requesting him to forward as early as possible the triplicates duly signed. Action was apparently taken on this, as seen by the notings on the margin of this letter and the triplicate receipts in respect of the earlier consignments were sent, and the last of the pending receipts—Document 20—bears an endorsement that it was personally handed over to Bashir Ahmed. Though even in regard to the later deliveries a list of the defects is noted the formal receipts in Triplicate to be forwarded to the TELCOs which bear the signature of the Deputy Traffic Controller, state that the vehicles had been received "O.K. in all respects." This is however, an irrelevant matter since this is not the subject of the charge as notified.

12.24 But what is of significance is that in these receipts there is space reserved above that where the signature of the receiving officer was to appear, to indicate the place of delivery with the words in print "Received the above vehicles, O. K. in all respects at ————" In the receipts signed by the Transport Officer vide Documents 16-20 the place of delivery for which space is reserved is left blank. The documents referred to above are office copies of one of the Triplicates but as admittedly the TELCOs have paid Nav Bharat on the basis of the vehicles having been delivered at Srinagar, it is clear that the originals of which there are copies have been tampered with by inserting in it the place of delivery as "Srinagar". That, this was the method adopted, is seen from a few of the documents produced by Government. Thus document 35A is a letter addressed by the Works Manager, Jammu dated 7th September, 1962 to Fairdeal Motors, Jammu acknowledging receipt of 20 T.M.B. Chassis on 5th September, 1962. It is, therefore, clear that the delivery was at Jammu. The corresponding copy of the triplicate in the possession of Nav Bharat was seized by the Police from Nav Bharat transporters during the course of the investigation. It is found to bear the signature of the Parts Manager with a rubber stamp indicating the vehicle to be "O K. in all respects" and in addition containing the words "at Srinagar" (on) "7-9-62" (Document 36). It is obvious that the words underlined which are false both as to the place and as to the date have been interpolated and that the original sent to the company must also have borne this interpolation in order to induce them to make the payment of the transportation charges up to Srinagar. Again Document 44 is a letter by the Works Manager Jammu to Fairdeal Motors, Jammu dated 10th June, 1963 acknowledging receipt of 25 T.M.B. vehicles whose Engine and Chassis numbers are set out. Document 45 is the formal receipt in Triplicate in two sheets of this consignment, which is one of the triplicates in the possession of Nav Bharat Transporters. It recites on the first page receipt of 13 vehicles and on the second of 12 vehicles. On each page is the signature of the Deputy Transport Commissioner, Jamwal Singh. This is below a rubber stamp reading "Vehicles received complete O. K.

in all respects." In the column next to that in which the two signatures appear and in the space reserved for indicating the place and the date of delivery are written the words "Srinagar (3n) 22-6-63" with an arrow at the top indicating that this writing has to be read as being authenticated by the signature. Document 45 was also among those seized by the Police from Nav Bharat Transporters, the office copy of this being missing from the Government file. A similar feature is apparent in Document 53 — one of the Triplicate forms bearing no date which acknowledges the receipt of 15 vehicles "at Srinagar" on "5-7-63" the peculiarity of this being that the interpolation is just over the signature of the Deputy Transport Commissioner. This has only to be compared with Document 52 being a letter to Fairdeal Motors, Jammu by the Works Manager, Jammu acknowledging the receipt of these 15 vehicles on 3-7-63, to show that the words underlined above are an interpolation. In this connection, it is not without significance that though in paragraph 11 of his affidavit the Deputy Transport Commissioner has specifically stated that the description of the place of delivery were interpolations, the same has not been in terms denied by Bakshi Bashir Ahmed, who has specifically dealt with and furnished a reply to each one of the several other matters set out in this affidavit. In fact there is no dispute that the 314 vehicles were delivered at Jammu, but that Nav Bharat was paid on the basis of their having been delivered at Srinagar. I am satisfied that this has been achieved by making false and fraudulent representations to TELCOs on the strength of the forged endorsements as regards the place of delivery.

12.25. How the overpayment was noticed and its sequel furnishes interesting reading which I do not think it proper to omit. It is possible that if the Transport Department was more efficient, this overpayment by the Government could have been detected early if not avoided but it is obvious that it was detected very late. The matter, however, came to the notice of the Government only when the Accountant General drew the attention of the Transport Commissioner to this overpayment by a communication on 24th August, 1963 (Document 54) giving a list of the 314 vehicles taken delivery at Jammu, together with their invoice numbers etc. On receipt of this the Transport Commissioner brought this overpayment to the notice of TELCOS by

letter dated 18th September, 1963 in which he said that though Government had been charged for the delivery at Srinagar, 314 vehicles had actually been delivered at Jammu, and requesting that the proportionate excess transport charge which had been prepaid might be credited to their account (Document 55). This was immediately acknowledged by TELCOs (Document 58 dated 25/27 September, 1963) in which they said: "We confirm that the delivery charges we had quoted to you are for delivery of the chassis at Srinagar. We had instructed the transport contractors, Messrs Nav Bharat Transporters, to deliver the chassis to you at Srinagar. We are surprised to note..... that 314 chassis were delivered to your Regional Workshop at Jammu, instead of at Srinagar. We are taking up the matter with the transport contractors and shall revert to the subject within the next few days". We do not have the letter from TELCOs to Nav Bharat, but can only guess its contents from Document 58 and what followed. The Deputy Transport Commissioner wrote a further letter to TELCOS on 7th December, 1963 (Document 56) asking them not to press the Transport contractors further. It is true that the respondent had ceased to be the Prime Minister by the date of this letter, but evidently this assistance to Nav Bharat Transporters by not embarrassing them but to permit them to retain the pecuniary advantage they had obtained through their fraud was evidently not thought improper.

12.26. Before leaving this part of the case, it is necessary to advert to a rather lame and wholly untenable answer that was suggested by the Transport Commissioner to the Home Department as to one to be furnished to the Accountant General requesting him not to include a paragraph regarding this overpayment in his audit report. As this reply has formed in some part the basis of the defence raised by Bakshi Bashir Ahmed to the charge of "undue pecuniary advantage" it would be proper to deal with it at some length.

12.27. The first point urged in this draft reply that the department, having come to know of the excess charge, had withheld substantial amounts due to TELCOs may be rejected out of hand. The second was that drive-away charges included drivers' wages on their return journey. This is wholly incorrect and misleading as a reference to the contract with TELCOs would

show. Then it was said that delivery was taken at Jammu to suit the convenience of the Department, as bodies had to be built on the same at Jullundur. But then what prevented them from writing to TELCOs and pay the transport charges up to Jammu is not mentioned. Then something vague was said about the non-consumption of fuel on the uncovered journey which is wholly irrelevant and was not even adverted to by TELCOs in Document 58.

12.28 Now the defence of Bashir Ahmed as regards the charge obtaining "undue pecuniary advantage" in the mode specified in the second sentence of the allegation as notified, was this: While admitting that Nav Bharat Transporters had obtained from TELCOs charges for transporting the 314 vehicles to Srinagar, while in fact they were delivered at Jammu, he contended that he was entitled to this payment because the chassis were delivered there only because the Transport Department required that to be done. His further contention was that the contract of carriage was indivisible in point of distance, and that Nav Bharat Transporters were entitled to be paid the entire charges wherever the vehicles were delivered. Lastly, he suggested that the overpayment if any had been recovered by Government from TELCOs, and that therefore the Government had suffered no loss. Taking up the last one first, Government have denied the repayment and nothing further has been offered as evidence in support of the submission regarding reimbursement, which I reject as without any basis. Nor is there any point in the contention as regards the indivisibility of the contract of carriage. TELCOs had obviously different rates for delivery at places situated at different distances from Jamshehpur and if only Nav Bharat had informed TELCOs of the delivery at Jammu they would have been paid only the proper rates for carriage up to that place. It is also to be noted that if Nav Bharat really believed in this construction of the contract of carriage, one would have expected them to frankly inform TELCOs of the actual place of delivery instead of resorting to the interpolation of "Srinagar" as the place of delivery in the Triplicate forms signed by the Transport authorities. In view of what I have said just now, the circumstance that delivery was taken at Jammu to suit the convenience of

the Government is wholly irrelevant to the question as to whether there has been an overpayment or not. Every one of the defences raised by Bakshi Bashir Ahmed deserves, therefore, no serious consideration and has to be rejected. The result is that I find that the Government have established that "undue pecuniary advantage" has accrued to Nav Bharat Transporters—a concern in which Bakshi Bashir Ahmed was interested as I have found, as sole proprietor.

12.29. The question that remains for consideration is as to whether it has been established that this undue pecuniary advantage has been secured by the "abuse and exploitation of the the official position" of the respondent. It is at this point that I do not find it possible to accept the case of the Government. Even the Transport officials do not, in their affidavits allege any direction by the respondent to them to show any favour to Nav Bharat or his son. Mr. Khambata, however, urged that on the facts viewed as a whole, the inference necessarily followed that the respondent must have had knowledge of the improper gain being secured by his son and that he acquiesced in it. I am wholly unable to agree. "Knowledge" of what? It is no doubt true that delivery was taken at Jammu, but it was not even suggested that this was done by the officers in order to help Nav Bharat Transporters to obtain any advantage. If the officers did not do it with that intent, there is no question of the respondent being held guilty of having had that done with that knowledge or intent. The fact was that the advantage was obtained by Nav Bharat only by resort to the interpolations in the acknowledgements regarding the delivery of the vehicles and for this, none outside Nav Bharat was responsible. The officers were negligent in not checking up the amounts to be paid to TELCOs under their contract with that company and it was only when the Accountant General pointed the overpayment that they become aware of the true position. Their first reaction to ask TELCOs for a refund was natural and healthy though later owing to influences not very clear they decided that Nav Bharat should not be pressed. This, however, is not very relevant in the present context.

12.30. In view, therefore, of the manner in which the undue pecuniary advantage was obtained by Nav Bharat Transporters, I hold that the Government have not been able to establish that the same was "secured by the abuse and exploitation of the official position" of the respondent and I find accordingly.

13. 1. The last of the allegations in this Transport group in which Bakshi Bashir Ahmed is alleged to have obtained undue favours from the respondent by abusing his official position are Allegations 26 and 27 which are inter-related and relate respectively to—

- (a) Bakshi Bashir Ahmed obtaining from the State Government three tankers in violation of the law and contrary to the rules of the State Government in order to enable himself to obtain a profitable contract for the transport of petroleum and petroleum products for the Indian Oil Co. from Pathankot to Jammu, Srinagar etc.; and
- (b) the manner in which Bakshi Bashir Ahmed was enabled to eliminate all competitors who offered more attractive terms for the above-mentioned carriage contract with the Indian Oil Co. and obtained the contract for himself.

13. 2. The summer of 1962 witnessed the Chinese menace assume threatening proportions and this appeared to be drawing near. The construction of lines of roads on the northern borders of this State was pushed through with speed by the Central Government's Border Roads project. This needed quite a quantity of oil and oil products being moved up from the railhead at Pathankot and the State Government made efforts to assist in this programme, by providing a sufficient number of oil tankers, deciding to increase their tanker fleet for the purpose.

13. 3. Meanwhile the Indian Oil Company (which for shortness will hereafter be referred to as the I.O.C.) was on the look out for an agent who would transport its products into the State from Pathankot. They ultimately fixed upon Mr. Bashir Ahmed—in March 1963—conducting his business in the name of New Bharat Transporters, whom they appear to have contacted towards the end of 1962. Mr. Bashir Ahmed had then no tankers with him, and at that date these were not procurable either from the market.

13.4. It is the case of the Government that oil transport business was very profitable and that in order to enable Mr. Bashir Ahmed to enter this line of business activity by securing the I.O.C. agency for transport of oil, the State Government reversed their previous policy in regard to increasing their own tanker fleet to assist the Border Roads project and transferred to him three tankers by exchanging these tankers with passenger bus chassis which he had and that with these tankers on hand he was able to secure the agency and make enormous profits.

13.5. The charge in respect of this matter is in two parts—the first formulated in Allegation 26 relating to the Government tankers being made available to Mr. Bashir Ahmed and the other, its sequel which is intimately connected with it being concerned with the manner in which the State Government aided him to secure the I.O.C. agency—is the subject-matter of the charge in Allegation 27.

13.6. Allegation 26 which charges the respondent with impropriety and misconduct in exchanging 3 Tankers belonging to the Government with Bakshi Bashir Ahmed for three of his Passenger Chassis runs as follows :—

“Bakshi Bashir Ahmed son of Bakshi Ghulam Mohammad wanted to enter the oil transport business and had to arrange for some tankers for this purpose. His difficulty was solved by the J & K Transport Department, providing him in January, 1963, three tankers in exchange for passenger vehicle chassis. This was against the normal rules and procedure, and was the result of the exploitation of the official position of Bakshi Ghulam Mohammad.”

13.7. As would be seen from the above, the exchange is said to have taken place in January 1963. The fact that three truck chassis belonging to Government on which on their orders tankers had been built were exchanged for three passenger chassis of Bakshi Bashir Ahmed is admitted and, therefore, the matters in controversy in respect of this charge are only two—

- (1) Was this exchange against law and the normal rules and procedures and effected in order to benefit Bakshi Bashir Ahmed ;
- (2) was this departure from the rules at the instance of or with the knowledge and connivance of Bakshi Ghulam Mohammad.

13.8. No other instance of an exchange of vehicles by the Government has been brought to the notice of the Commission by the respondent or by Bakshi Bashir Ahmed to whom notice had been issued under Rule 6(1)(a) in the replies which both of them have filed. But this does not suffice to answer the first of the above matters which depends on whether this exchange was effected designedly to benefit Bakshi Bashir Ahmed at the expense of the State or to its detriment, as is the case of the Government, or whether the transaction as the respondent and Bashir Ahmed have sought to make out was really in the interests of the State to which Bakshi Bashir Ahmed, it is even said reluctantly, agreed. I propose, therefore, to examine first this part of the charge from this angle.

13.9. Before, however, the details of the facts are set out, I should narrate the background regarding which there is no controversy with reference to which the Government say that the admitted facts have to be viewed.

13.10. As is known, the Chinese started an attack on the northern frontiers of India on the 20th October, 1962. Immediately thereafter there was a Proclamation of Emergency and the Defence of India Ordinance, later replaced by the Defence of India Act followed and under the latter the Defence of India

Rules were promulgated. On the 26th October, 1962, the Government of India issued, by virtue of the powers vested in them under the Emergency legislation, instructions to the automobile manufacturers all over the country to withhold the sale of all trucks, buses and certain other type of prescribed vehicles, thereby freezing the stocks of these vehicles. On that date the Additional Secretary to the Government of India, Department of Heavy Industries, sent telegrams to all the manufacturers of automobile vehicles including TELCO and Ashok Leyland which read—

"IN ORDER TO MEET URGENT DEFENCE REQUIREMENTS PLEASE STOP ALL DELIVERIES OF TRUCKS, JEEPS AND STATION WAGONS OF ALL DESCRIPTIONS FROM TODAY (.) KINDLY INSTRUCT YOUR DEALERS THROUGHOUT THE COUNTRY ALSO TO STOP DELIVERIES OF TRUCKS, JEEPS AND STATION WAGONS AS FROM TODAY WHATEVER THEIR COMMITMENTS MAY BE (.)"

On receipt of this instruction TELCOs telegraphed on 27th October, 1962 to all their dealers as follows—

"WITH IMMEDIATE EFFECT PLEASE STOP ALL DELIVERIES OF TRUCK AND BUS CHASSIS IRRESPECTIVE OF PRIOR COMMITMENTS (.)..... PLEASE CONFIRM COMPLIANCE..... DELIVERIES FROM JAMSHEDPUR SUSPENDED UNTIL FURTHER NOTICE"—signed "TELECOSALES"

13-11. There was a few days later a slight relaxation of this ban by which bus chassis were "defrosted". On 1st November, 1962, the Government of India, Department of Heavy Industries, sent a telegram to TELCO and other manufacturers—

"IN MODIFICATION OF MY TELEGRAM DATED TWENTYSIXTH OCTOBER (i.e. previous one) "TRUCKS" DOES NOT INCLUDE BUSES (.) YOU MAY THEREFORE RELEASE BUSES (.)"

These instructions of the Government which had statutory force, were modified from time to time by way of gradual defreezing so that by the beginning of the year 1963, the "freezing" or the imposition of the ban on sales was confined *inter alia* (referring only to those relevant in the present context) to—

- (a) all petrol driven chassis ; and
- (b) Tata Mercedes Benz truck (not bus) chassis.

Even in regard to these two categories there was an escape provision under which State Governments could, make requests to an officer specified in the "order" for the release of such vehicles, who could, if the same were considered reasonable, grant them subject to availability

and to the prior needs, if any, of other Governments. At the beginning of 1963 the position, therefore, was—

- (1) There was a "freeze" on the sale of T.M.B. trucks by which there was a complete ban on purchases by private individuals from which however State Governments could obtain exemption.
- (2) The purchase of bus bodies was not subject to this restriction, *i.e.* both the State Governments and private individuals were free to buy them subject to availability.

13.12. Keeping the above legal position in mind, I shall proceed to narrate the undisputed facts before commenting on them. The State Government had in their hands in July 1962 quite a number of truck chassis (their exact number is not very material). Besides, and this is sufficient for the purpose of appreciating this charge they received 20 more truck chassis on 5th September, 1962 and a further 19 on 26th October, 1962 (vide Document 5 and 6).

13.13. It is clear from the documents produced by Government to be referred to immediately that the Transport Department was at about this time very desirous of having Tankers mounted on some of these chassis to enable the Government to transport petroleum and other oil products between Pathankot and the forward areas in Ladakh. On the 27th July, 1962 the office of the Transport Commissioner issued a notice calling for tenders for the fabrication and of mounting of 5500 litres capacity petrol tanks on T.M.B.L.312/42 chassis, specifying the details of the needed tankers and their related equipment (Document 2). Nine tenders were received and these were opened and their cost structure was analysed even before the last date for the tender had expired (Document 3). Proposals for the acceptance of some of these tenders were made by the Deputy Transport Commissioner on 4th August, 1962. In this note (Document 4) he stated that it was essential that the existing strength of the Tank Lorry fleet for haulage of petrol had to be expanded, due partly to the needs of the Project Beacon to cart their fuel to Kargil and Leh. For this purpose it was suggested that at least six T.M.B. Truck chassis arriving then should be utilised for mounting tanks. After analysing the tenders received, this officer proposed that the work of body building might be entrusted to three of the tendering firms at the rate of two tankers each.

13.14. This proposal which was put up to the Transport Commissioner was approved by him. In recording his approval for this split up among three firms, the Transport Commissioner explained that the tankers were meant for cartage of petrol and other oil products to Ladakh and as winter was approaching, they had to race against time and in view of the Emergency they could have the tankers ready earlier only if the orders were distributed and so agreed to the placing of orders with two tenderers even though theirs was a slightly higher rate than the lowest.

13-15. The Department had as related earlier received on 5th September, 1962, 20 T.M.B. Truck chassis (Document 5) and one of them (item 11) was sent to Messrs United Motors Body Builders Industrial Co-operative Society Ltd., Jullundur on 21st September, 1962 for the construction and mounting of a petrol tank as per specifications already communicated (Document 7). Again on 16th October, 1962 another chassis (item 13 of the same consignment) was despatched to the same concern (Document 8). Thereafter on 26th October, 1962 a further consignment of 19 truck chassis was received by Government (Document 6) and of these item I was despatched on 1st November, 1962 to Messrs Harbans Tank Engineering Works, Pathankot for a similar purpose. The fabrication work was thereafter completed and delivery taken by the Transport Department on 4th January, 1963 (vide Heavy Vehicle Charge Register Documents 13 to 15).

13-16. Suddenly the Deputy Transport Commissioner who by his note dated 4th August, 1962 in Document 4, had initiated the proposal for expediting the construction of tankers to meet the needs of the Tanker fleet of the State, started a fresh proposal on 9th January, 1963 (vide Document 10) which involved the scrapping of his earlier one which had received the approval of the Transport Commissioner and on the basis of which 6 chassis had been sent for building tanker bodies. He stated that as there was a "possibility of army demands becoming slack", the Department should pay attention to the passenger fleet, which might be a more permanent and a more lucrative line of business. He added that in view of the recent instructions of the Government of India it would not be possible to get allocation of T.M.B. passenger bus chassis from Tatas, but if the local dealers (i.e. Fairdeal Motors) had them in stock, they should be persuaded to part with five of them, even if this should be done at the cost of replacing an equal number of truck chassis from the incoming consignments from Tatas. The proposal was immediately agreed to on the same day by the Transport Commissioner to whom it was put up, who suggested that five passenger chassis might be taken from Fairdeal Motors in exchange for an equal number of truck chassis. Accordingly a letter was addressed on the same day (9-1-1963) (Document 11) to Messrs Fairdeal Motors, Jammu to supply six units of T. M. B. LP 312/42 (Passenger 165" W.B.) chassis immediately "from ready stock" or "immediately on arrival" as the Department was "in dire need" of them. This was replied to on 11th January, 1963 (vide Document 12) by H. D. Takoo of Fairdeal Motors saying that they could not supply the four passenger chassis on outright sale basis but could do so in exchange or as a loan to be returned when such chassis were received by Government. Apparently after this letter, the parties met and discussed the matter, for though we find that the formal order in regard to this transaction is dated 4th February, 1963 (Document 19) two of the tankers were delivered to Fairdeal Motors on 14th January, 1963 by the Department (vide Document 16) and the third on 4th February, 1963 (Document 17), all of these on telephonic instructions of the Transport Commissioner as seen from the note at the bottom of these documents. In exchange Fairdeal Motors delivered on 14th January, 1963 to Government four passenger bus chassis whose receipt was acknowledged by the Works Manager (Document 18). The actual number of truck chassis with tankers built on them exchanged

for passengaer chassis was four, the fourth being a case where the truck on which the body was in process of construction was transferred—Bashir Ahmed taking delivery from the body builders—but as the charge as notified refers only to three truck cnassis, I am confining myself to three.

13-17. The formal orders authorising this exchange were passed on 4th February, 1963 (Document 19) and in this the transaction was justified by the impossibility of procuring T.M.B. passenger chassis immediately or in the near future. The note referred to the earlier correspondence commencing with the Department's letter dated 9th January, 1963, then to the firms's reply dated 11th January, 1963 and accepted one of the alternatives, viz. of exchange, offered by the dealers. The Transport Commissioner approved the action proposed and immediately an order was issued by the Transport Commissioner to the dealer requiring them to deliver passenger chassis in exchange for truck chassis (vide Document 22). It would however, be seen firstly that so far as this order went, it did not authorise the handing over of tank mounted chassis, but only of trucks and secondly more than two weeks before this formal order, and without even the firm asking for such mounted chassis, tankers had been handed over to them in exchange on telephonic orders of the Transport Commissioner. The other point which has to be noticed is that one of the tankers which had been delivered by the United Motor Body Builders to the Department on 4th January, 1963 was running in the State's tanker fleet, carrying petrol, was withdrawn from such work and handed over on 4th February, 1963 on the telephonic instructions of the Transport Commissioner (vide ibid Document 17).

13-18. Stopping here, I might sum up the features of this transaction which are quite out of the normal by reason of which they deserve careful scrutiny and require quite some explanation. In the first place, it is somewhat remarkable that the Deputy Transport Commissioner and Transport Commissioner who in August, 1962 in Document 4 were satisfied that the tanker fleet required to be strengthened so as to provide the army and the Border Roads Organisation with petrol at the forward area at Ladakh in pursuance whereof they had ordered the speedy construction of six tankers, should suddenly develop an attraction towards the increase in their passenger fleet on the ground that the same was urgently needed and was more lucrative than goods transport and this just after taking delivery of the tankers and particularly on the ground that the demand of the army at Ladakh might slacken (Document 10).

13-19. So far as the first factor was concerned, it is to be noticed that the records disclose that there was a complete absence of any urgency in their having to put the passenger buses on the roads when the bodies were built, the reference to the "dire need" being wholly invented. The vehicles charge register shows that of the four passenger chassis got from Fairdeals on the 14th January, 1963 the first bus was handed over to the Department after the body was built on 14th March, 1963, but it was put on the road only on 22nd April, 1963, the second was got back with a bus body on 15th March, 1963 and put on the road on 18th April, 1963,

the third and the fourth were got back on 14th February, 1963 but were utilised only from 22nd April, 1963. So the buses remained idle for periods ranging from one to two months. Again it is in evidence that on Truck chassis, passenger bodies could be built and four actual instances of such construction by the Transport Department have been placed before me by way of sample. In this connection I might point out that trucks of both types have the same wheel base—165". If this is so, having regard to the number of Truck chassis—at least 39 (Document 5 and 6)—all of L. 312 with a wheel base of 165" which they had received before this transaction of exchange originated, in January, 1963, there was no need for an exchange at all and certainly there was no need for exchanging tankers for passenger chassis.

13.20. The second ground given was that the demand of tankers by the army might slacken and so there was no need to increase the tanker strength. That the Department had still need for tankers and that urgently is established by the fact that within five months, *i.e.* in July, 1963, the Transport Commissioner gave verbal orders for the construction of Tankers. Document 24 is a letter dated 22nd July, 1963 addressed to M/s Ram Gharia Tank Builders Pathankot sending them six Truck chassis "as per the Transport Commissioner's verbal order" dated 12th July, 1963 for the fabrication and mounting of Tankers for carriage of petrol. Document 25 is the agreement executed by the firm in which after setting out the rates to be charged, is included a term that the work would be executed in ten days, in default of which the firm agreed to pay damages at Rs. 30/- per day for late delivery. This is certainly good evidence that the Department considered the operating of the Tankers a matter of urgency.

13.21. Again it has to be remembered that in their notes recorded by the Deputy Transport Commissioner and Transport Commissioner in August 1962 (Document 4) they had emphasized the urgency of strengthening the tanker fleet for carrying petrol for the needs of the army in Ladakh. That was the period when the threat of the Chinese aggression was merely on the horizon. But in two months time, in October, the threat materialised and there was greater need for rushing supplies of petrol to the forward areas. That need has not diminished up to this day, and it is not as if this was not known to the Transport Department of the State. And yet we find that proposals are put forward in January 1963 to vary the programme to strengthen the tanker fleet, thus imperilling national security, but soon after the exchange transaction is completed and the tankers are handed over, proposals are revived to build tankers and they are required to be and are got constructed with rare expedition. In this connection it might be pointed out that the construction of the tankers which were delivered to Messrs Fairdeal Motors in January, 1963 took between two and three months being the time agreed to, the body builders were on the second occasion required to complete their work in ten days.

13.22. The next set of submissions in regard to this charge was based on the circumstance that every part of the reasoning on which the Deputy Transport Commissioner based his recommendation to vary the original proposal to strengthen the tanker fleet was deliberately

false. The statement that the demands of the army would slacken is obviously unsustainable knowing the area to which goods were being moved and must have been known to be untrue. It was then said that "in view of the recent instructions of the Government of India it may not be possible for the Department to get allocation of T.M.B. passenger chassis". As the Orders passed by the Government of India in or about the end of 1962 *defrozeed the sale of T.M.B. bus chassis*, but kept in tact the earlier orders of 26th October, 1962 *freezing the sale of T.M.B. truck chassis*, the Transport officials must obviously have known that the position was just the reverse, viz. that bus chassis could be had subject to availability even by the general public, but that truck chassis could not be had by private individuals and even by Government Departments except on special release orders. So that to agree to release truck chassis for the use of a private dealer in exchange for passenger chassis which the latter could have obtained subject to availability, was not merely grossly improper, but contravened the spirit of the Government of India freeze orders, as the Freeze orders could not have contemplated State Governments passing on to private individuals trucks whose sale to the latter was banned as a measure for conserving strategic equipment for public needs.

13.23. The last reason given that as the Department was being run on a commercial basis, the use of a passenger chassis would be more profitable than the use of a tanker, rests merely on an assertion, and is certainly not borne out by the alacrity with which Fairdeal Motors, whose proprietors intended to engage in petrol transport (vide Allegation 27), agreed to obtain these tankers.

13.24. The reasons for the suggested exchange being thus inadequate and, I would add, invented, the progress of the transaction leading up to the actual exchange leaves me no alternative but to hold that the whole thing was motivated by the object of placing these tankers which were otherwise not procurable in the hands of Fairdeal Motors.

13.25. The history of the negotiations and some of the irregularities connected with the transfer have been mentioned, but these may now be gathered together. We start for this purpose with Document 10 dated 9th January, 1963, five days after the tankers are received from the body builders, which is a note by the Deputy Commissioner, Transport which makes a departure from the earlier views expressed by him on 4th August, 1962 relating to the strengthening of the State tanker fleet. The suggestion in Document 10 with which the Transport Commissioner agreed was in the alternative—

- (a) to get allocation of T.M.B. passenger chassis from TELCO or get the same from the local delers ;
- (b) if straight purchase was not possible, to replace these with goods chassis ;

and this, it should be borne in mind, at a time when there was a Freeze order of the Government of India on the sale of goods chassis so far as private parties were concerned. No sooner was this order passed than a

letter was addressed on 9th January, 1963 itself to Fairdeal Motors enquiring if they could sell outright and deliver immediately passenger chassis. The reply was, as one might expect, that they would not sell outright but would exchange, or make available on loan. If it was a question of exchange having regard to the non-availability to them of truck chassis, it is clear that they desired these alone in exchange. Again though the firm appeared to give the Department the option of replacing passenger chassis with other similar ones which they might get subsequently, this was not availed of though in view of the "Freeze orders" of the Government of India which "defroze" bus chassis, there was every chance or possibility then of the Government obtaining such bus chassis in the near future. The suggestion of learned counsel for Government that Fairdeals Motors knew that his option would not be availed of because the Transport Department were aware of the purpose of the entire transaction, appears to me well founded. This was on 11th January, 1963, and on 14th January, 1963 the Government got the 4 passenger chassis and two of the tankers were delivered in exchange to Fairdeals on 14th January, 1963 and the other on 4th February, 1963. As pointed out, there was no order of the Transport Commissioner choosing between the alternatives seemingly offered by Fairdeal Motors and directing the delivery of the tankers in exchange and even the post-event memorandum dated 4th February, 1963 (Document 22) which purports to be in response to the reply of Fairdeals dated 11th January, 1963 does not authorise the delivery of tankers. In this the proposal is to deliver merely goods chassis in exchange, in view, it is said, of the fact that they have already in stock sufficient number of goods chassis. The exchange as seen above had taken place by then and the tankers had been delivered in the circumstances narrated earlier. It would, therefore, be seen that Tankers which were specially fabricated for strengthening the petrol carrier fleet were diverted to Fairdeals without any previous order to that effect by the Transport Commissioner, and even without a demand if one goes merely by the correspondence, for these from Fairdeal Motors though as seen from the admitted facts in relation to Allegation 27, Bashir Ahmed was in urgent need for tankers. I must confess to a feeling that starting with the note Document '10 and the entire correspondence with Fairdeal Motors which followed is really artificial, and meant to provide the department with a paper justification for an improper deal which had been fixed up between the parties.

13.26. It is in the context of these facts and circumstances which are borne out by the documents that the propriety and regularity of the transaction has to be viewed. Before continuing, it would be convenient to refer briefly to the defence of the respondent and then of Bashir Ahmed to this charge. The respondent states that he does not remember the details of the Freeze order, though he states he recollects that there were some restrictions following the proclamation of Emergency. He then denies that he gave any instructions to the Transport officers to effect the exchange, a matter which is asserted by them in their affidavits to which, however, I am not referring, as I am not basing any conclusions on their statements to this effect even though on oath. He also denies that his official position was exploited to effect this exchange for the benefit of his son. The reply thus being purely negative, it leaves it to the Government to establish their case.

13.27. Coming next to Mr. Bashir, he too denies that he sought the intervention of his father, and in particular asserts that he never even mentioned to his father anything regarding his negotiations with the Indian Oil Corporation for the carriage of their petroleum. He supports the respondent by stating that the latter did not direct the Transport Commissioner to make available the Tankers and adds that at the time the tankers were made available, he was not interested in oil tankers. In other words he wants the Commission to believe that he conferred a favour on the department by taking these tankers in which he was not interested in exchange for passenger bus chassis which the department urgently needed but which they could not otherwise immediately procure. In further paragraphs he refers to the correspondence between the Department and himself which resulted in the exchange being agreed to, and says that the tankers were handed over in exchange because they had not been made ready in time, as winter had set in and could not be immediately used as the mountain passes were closed. Besides, it is stated that the tankers were given in exchange as Government had not sufficient number of unmounted chassis on their hands, which it is needless to point is plainly contrary to the facts.

13.28. In regard to the portion of the reply which seeks to justify the exchange on the merits, it designedly ignores and makes no reference to the Freeze order of the Government of India under which while T.M.B. Bus chassis could be had by private parties the sale of Truck chassis was forbidden to every one except to Government and this on special release orders. This feature is prominently brought out in the statement of case filed on behalf of Government and though the respondent has chosen to refer to it, it is not even adverted to by Bashir Ahmed. Being in the trade and being a dealer of TELCOs vehicles and having intimation of the Freeze from TELCOs telegram to him dated 27th October, 1962, already referred to, it is fair to assume that he was aware of the legal difficulty in the way of his acquiring any truck chassis. He does not, of course, say that he had any other truck chassis with him.

13.29. The next point to be adverted to is his statement that he was not interested in tankers and that the Government as it were thrust these Tankers on him because of their need for passenger chassis which they desired to obtain from him. This also is seen not to be true. As would be seen from the discussion of the facts in relation to Allegation 27 infra though the actual contract between the Indian Oil Corporation and New Bharat Transporters (in which firm Bashir had even according to himself an interest) was made by exchange of letters on 15th March, 1963 (Documents 23 and 24 in Allegation 27), the Indian Oil Corporation had been trying to fix up a transporter for their petroleum products from as early as June, 1962. Other transport undertakings had submitted their quotations in July, but they had made their offers subject to conditions as to the I.O.C. procuring route permits to which the I.O.C. could not agree. The I.O.C. officials considered that if the State Government took it up it would be the best (see Document 4 dated 29th August, 1962 in Allegation 27). Apparently the State Government had not shown any willingness to undertake the contract. Thereafter, according to Bashir Ahmed in his reply to Allegation 27, someone,

whom he does not name had told an I.O.C. official Mr. Anand who was incharge of arranging the transport agency that he (Bashir Ahmed) was the person capable of taking up the contract. Bashir Ahmed then goes on to add that he first brought Mr. Anant into contact with Abdul Rehman, "partner of Nav Bharat", join in the negotiations, and finally that the contract was entered into on 15th March, 1963 by letters exchanged on the same date. Bashir Ahmed does not give us any idea of the dates on which these things took place, but it is not unreasonable to suppose that three months would not be a long interval between the time when he was first contacted by Shri Anant as the "fittest person" to undertake the job and when after negotiations with Nav Bharat (to be dealt with the Allegation 27 infra) in which he took part and the emergence of the final agreement with New Bharat. It is to be noted as seen from the discussion in Allegation 27 that Anant rejected the offer by another firm Poonch Kashmir Transport Co. Ltd. because they wanted him to secure route permits for their tankers and in contrast in their letter dated 30th March, 1963 it is stated that New Bharat had with them four Tankers on hand—three of them being those subject of this charge and I have already explained the source of the fourth also. In the circumstances, it would not be improper to conclude that the statement that Bakshi Bashir Ahmed was not interested in the business of petroleum transportation in January, 1963, is either deliberately untrue or to put it more charitably to him due to his misrecollection. Besides, for Bakshi Bashir Ahmed to say that while he was content to receive in exchange truck chassis, the Transport Department as it were, thrust petrol tank mounted vehicles on him, imposes too great a strain on one's credulity, for even on 14th January, 1963 the very day on which he delivered the passenger chassis, he got his employee to take delivery of two Tankers and the third one was delivered to him on 4th February, 1963 all on telephonic instructions of the Transport Commissioner—the third vehicle being withdrawn from transporting petrol for Government on which job it was then currently engaged. The fourth one it would be recollected he took from the body builder straight.

13.30. That what he states in his reply does not represent what he really felt, is also apparent from the manner in which he refers to his "achievement" in securing tankers in the context of the difficult supply position in regard to them in a letter which he addressed to the I.O.C. on 30th March, 1963 in which after referring to four tankers having already been lined up at Pathankot, he said—

"with modest pride it may be stated that it was with much difficulty that these six tankers could be arranged and that so soon against the background of total stoppage of truck chassis for sale to the trade. Anyway this is an achievement....."
(vide Document 25 in Allegation 27).

The result of this discussion may be summed up thus :

- (1) Having regard to the approach made to him by the I.O.C. officials, Mr. Bashir Ahmed became interested in the business of transport of petroleum and was in need of tankers.

- (2) Owing to the Freeze orders of the Government of India truck chassis could not be had. The Government had truck chassis with them and besides had ordered some of these to be fitted with tankers and they were ready with Government on 4th January, 1963.
- (3) The letter of Bashir Ahmed dated 11th January, 1963 was replied to only on 4th February, 1963 and this might have been received on the next day, but by that date the entire exchange had already taken place.
- (4) Bashir was thereafter in a position to conclude his agreement with the I.O.C.

13-31. I shall now take up the question of the impropriety and irregularity of this transaction. Pausing here, I may add that in the statement of the case reference is made to certain calculations on the basis of which it is stated that the exchange resulted in pecuniary loss to the Government. As, however, there is nothing about this in the allegation as notified, I do not propose to take any notice of this feature, assuming that it is correct. Leaving this out—

- (1) the first impropriety or illegality in this transaction is said to consist in this that it has evaded or bypassed the spirit if not the letter of the Government of India's Freeze Order under which no T.M.B. truck would be released for private purchase. No doubt the Government Order in terms places a ban only on manufacturers selling to private individuals but it appears to me, that it would be a plain evasion of the rules, if a Government which is authorised to acquire a "frozen" vehicle, diverts it to the use of a private individual.
- (2) Next that at a period of National Emergency, when there was great need for transporting petrol to the forward areas, the Government, in variance with the views expressed by them a few months earlier deprived themselves of the use of tankers by making them available to a private party to enable him to earn his profit. This has to be taken in conjunction with three other matters—
 - (a) If the Government really required buses for operating their passenger fleet there was no insuperable obstacle in having passenger bus bodies built on T.M.B. L. 312/42 chassis, the Department having done so earlier and they had at least 39 such Truck Chassis with them if they had really needed buses and there was, therefore, no need for getting passenger chassis from the dealer, in exchange.
 - (b) Even if an exchange was desired the bare chassis could have been given instead of tanker mounted ones and particularly as the tankers could have been put to use

by Government as exemplified by that which was delivered on 4th February, 1963.

- (c) Though Fairdeal Motors was at least on paper content to receive passenger chassis given to them from new arrivals, there was no reason why this was not availed of.

I have no doubt that the improprieties such as are relied on, are most serious and as pointed out earlier there has never been any case of exchange of vehicles in the Transport Department. That these improprieties have been committed by the Department, not as is stated for the ostensible purpose of the Department earning more revenue, but for benefiting Bashir Ahmed, is also in my opinion made out.

13.32. We next come to the most important question in respect of this as of other allegations : was this impropriety committed by the Department on the direction of the respondent, or with his knowledge and connivance. It is this part of the case in respect of most of the allegations, that I have felt the greatest difficulty. The Government have been unable to point to any written order passed by the respondent to put through this transaction. It is fairly clear from the files that though under the rules the Transport Commissioner was not authorised to effect a transaction of this type without specific Government orders, the exchange was put through without any formal or written order of Government sanctioning it. The Accountant General raised an audit objection to this irregularity in November 1963 and stated that he proposed to insert a draft paragraph in relation to it. In the reply proposed by the Transport Commissioner, the point raised about the exchange not having been sanctioned by the Government was not controverted and in these circumstances there could be no surprise that we do not have an order or direction by the respondent sanctioning or approving this exchange.

13.33. But the question still remains whether a transaction of this nature involving a matter of policy—abandonment of the proposal for using tankers for transporting petroleum to the Border Roads Project and taking up instead the enlargement of the passenger service—would have been effected without the order of the respondent as the Prime Minister and also as Transport Minister which portfolio he held at this time.

13.34. This has to be judged in the context of the unequivocal orders of the respondent based upon Cabinet resolutions under which there could be no purchase of a vehicle except on the specific orders of the Prime Minister. Page 5 of the file GDB 560/61 (iii) contains circular 38 of 1961 of the General Department dated 1st November, 1961. The second paragraph of this circular reads —

“Government have further ordered that no new jeeps and/or vehicles should be purchased by any department even though funds exist and administrative sanction also has been obtained without obtaining orders of the Prime Minister on each individual case of this type afresh”.

On 1st November, 1961 the respondent was not the Minister incharge of Transport which portfolio he did not hold from the 1st January, 1961 to the 7th April, 1962. This Government order shows that even though he was not the Minister incharge of Transport, still he exercised full control over the purchase of vehicles.

13.35. This Government order was further clarified by further notings which are found in the same file by which it was made clear that every department had to obtain formal orders of the Prime Minister before purchasing a jeep or any motor vehicle and that the heads of departments were required to put through the transactions of these vehicles through the Transport Department, (See the instructions contained in the Chief Secretary's note dated 2nd January, 1962 file No.GDB 560/61). This last point about the purchase through the Transport Department after obtaining the orders of the Prime Minister was embodied in a formal Government Order (Circular No. 41 of 1961 dated 20th November, 1961). All this was the result of a decision of the Council of Ministers (Decision No. 150-B/61 dated 31st October, 1961). And lastly, I might refer to a letter from the Deputy Secretary to Government, General Department (GDB 560/61 (iii) dated 10th January, 1962) where he states—

“...no jeeps or any other vehicles can be purchased under the latest orders without the approval of Prime Minister. When such approval is obtained orders should also be solicited as to whether the purchase is to be made through the Transport Department or by you direct from the suppliers”.

Paragraph 31 of this file is also relevant. It contains a list of the permissions which the Prime Minister had granted to certain departments for the purchase of these vehicles. In relation to the Chief Engineer, Roads and Buildings who sought permission to purchase three Willy's jeeps, the note is—

“Order already placed under verbal orders of the Prime Minister,” and it is signed by the respondent on 24th February, 1962.

13.36. Now, therefore, what emerges from this is that without the respondent's order no purchase of vehicles could have been legally made and I take it that an exchange falls within these rules, for an exchange is but two mutual transactions of sale each one not for cash but for other valuable consideration. I have only to add that what applies to a purchase would apply to a sale and this technical aspect apart, we find that when even second hand vehicles were sold as we find in the documents filed in Allegation 37, these sales were sanctioned by the Cabinet and Government orders were passed for effecting them.

13.37. The question immediately arises whether the Transport Commissioner would have undertaken this exchange in the manner in which it was effected without the orders of the respondent, as the Cabinet resolution and the circulars issued pursuant thereto clearly required. I

feel that I can answer this question only in one way and that in the negative, namely, that he would not have done it except on the sanction of the respondent, for I consider this inference not merely reasonable but inescapably flowing from the facts connected with the transaction. Besides, it was not even a case of a single vehicle but of four and that adds to the gravity of the irregularity.

13.38. The only point on which reliance is placed by the respondent is the absence of any order by him on the file sanctioning or directing this exchange, but this by itself furnishes no conclusive answer because as I shall show in examining the charge in Allegation 27 which follows, as well as in Allegation 37 dealing with the allotment of a Fiat car to Mr. Mir Nasrullah, there is evidence in the files of verbal orders which have not been subsequently confirmed in writing. This I should say is only by way of illustration, for there are several other such cases to which I would refer in discussing other allegations where this defence is raised—e.g. Documents 17 and 18 in Allegation 32. In fact the respondent himself admits that he used to pass several verbal orders though he asserts that they were subsequently confirmed by him. But this confirmation however is not found to be an invariable practice. I might in this connection also refer to file No. 20 (NH) Part II Chief Engineer P.W.D. Srinagar which is a letter from the respondent's brother Mr. Abdul Majid on behalf of his Kashmir Oil Co. addressed to the Divisional Engineer, Roads Division, Srinagar dated 20th July, 1960. The writer was referring to the need to provide him with a site for installing a petrol pump for the Kashmir Oil Co. He states in it—

“As will be recalled some time back the Hon'ble Prime Minister allotted in your presence the plot of land opposite Regal Cinema to us for resitement of our existing pump situated at Residency Road.”

Now, there is no reference in the files to any verbal orders of the Prime Minister, nor any confirmation by him of such an order after the same was put up to him. But for the existence of this letter from Abdul Majid there would really be no evidence, if one went by the formal orders alone, of the respondent having taken any part in selecting the plot mentioned for allotment to Abdul Majid. The only reason why I am referring to this is to show that the non-existence of a written order or confirmation in writing of a verbal order does not prove that no verbal orders were passed.

13.39. The next circumstances which, in my opinion, is even stronger in favour of the submission of learned counsel for the Government regarding the part played by the respondent in this transaction, is the manner in which the noting in relation to the shift from the need for tankers to the need for buses to run additional passenger services, is done. As I have already pointed out, this started only on 9th January, 1963 just at the time when Bakhshi Bashir Ahmed was evidently approached by the I.O.C. to undertake the transport of their petroleum products from Pathankot to Srinagar etc. The object of this change in the policy, as seen from what finally transpired was to hand over the chassis on which tankers had been built to Bakhshi Bashir Ahmed for his

use in the petroleum transport business. I have already pointed out that this was not in the interest of the State besides being irregular and illegal. It is not suggested that the Deputy Transport Commissioner or the Transport Commissioner had any personal interest in Bakhshi Bashir Ahmed to make this noting and start a file for effecting this exchange. It is not the case of the respondent or of Bakhshi Bashir Ahmed that they had any such interest. The only person who had any interest in the matter and who could have influenced the initiation of these proposals through which within a week after the first noting on 9th January, 1963 the tankers were delivered, could have been the respondent. I am not, therefore, impressed by respondent's denial both as regards his knowledge that these tankers were being made available to Bakhshi Bashir Ahmad or that he made directions as regards this exchange.

13.40. My finding on this charge, therefore, is that this exchange which was detrimental to the interest of the State, besides being irregular because it was without the sanction of the Government and illegal because it was in violation of the orders of the Government of India by which the transfer of these vehicles was banned, was effected on the instructions of the respondent though there were no formal orders to that effect, and that he thus abused his official position to confer pecuniary advantage on his son Bakhshi Bashir Ahmed.

13.41. Bakhshi Bashir Ahmed did obtain considerable monies by reason of obtaining these vehicles which he could not have obtained otherwise, but as the profit he made out of this exchange was by the use of these tankers in transporting petroleum and petroleum products for the I.O.C. the obtaining of which agency is the subject-matter of the charge in Allegation 27, and has been considered there, it is not necessary to assess the pecuniary advantage gained by Bakhshi Bashir Ahmed by the abuse of power by the respondent in respect of Allegation 26.

14.1. Allegation 27 is a sequel to Allegation 26. The charge in it is that the profitable use for which the tankers were obtained in the circumstances narrated in Allegation 26 materialised by the obtaining of a contract from the I.O.C. for the transport of their petroleum and petroleum products from Pathankot to Srinagar and beyond, eliminating competitors who offered the I. O. C. more advantageous rates. The allegation as set out in the notification is in these terms :

"By the abuse and exploitation of the official position of Bakhshi Ghulam Mohammad, a concern owned by his son Bakhshi Bashir Ahmed (Messrs New Bharat Transporters) was able, in March, 1963, to secure a contract from the Indian Oil Company for transporting their petroleum products in J & K State, in spite of the fact that previously Messrs Poonch Kashmir Transporters had given quotations, which were lower than the rates at which the contract was given to Messrs New Bharat Transporters".

14.2. There were two points which were specified in the

statement of the case as constituting the gravamen of the charge in regard to this allegation. They were—

(1) That the State Government were themselves originally interested in obtaining this contract for the cartage of petroleum for the I.O.C. but that in order to accommodate Bakhshi Bashir Ahmed they at the direction of the respondent dropped this idea and abstained from entering into that business.

(2) This apart, that by reason of the control which the respondent exercised over the issue of route permits for transport vehicles, every other transporter who was otherwise willing to cart these products even at lower rates of transport charges was dissuaded if not prevented from entering into the field and that this enabled Bakhshi Bashir Ahmed to obtain this profitable contract and at rates higher than those which had been offered by others.

14.3. The brief facts necessary to understand the charge and appreciate the relevance of the documents that have been filed in relation thereto are these : Towards the middle of 1962 the I.O.C. intended to distribute their petroleum and petroleum products in the State of Jammu and Kashmir. Quite a considerable quantity of these was needed for the Beacon project which was laying roads etc. in the northern borders of the State and in the area leading to Ladakh and the I.O.C. contemplated obtaining a contract from the Government of India for transporting petroleum for this work. Before entering into such a contract with the Government of India the I.O.C. desired to assure themselves of the feasibility of their plans and ascertain the rates which they would have to pay to their contractors. They, therefore, commenced making enquiries as regards these matters. An enquiry was first made of the State Transport Commissioner about the rates for cartage from Pathankot to Srinagar and between Srinagar and Sonamarg, and also as regards the availability of bulk petrol carriers, to which they got a reply by a letter from him dated 6th June, 1962 (vide Document 2) quoting his rates and also stating that bulk petrol carriers were available with the Government and that their number would be increased before the end of the year which might be some indication of willingness on the part of the Government to undertake this transport. In this connection, I might recall the contents of Document 4 dated 4th August, 1962 in Allegation 26 already referred to under which six trucks chassis were proposed to be sent for tankers being built on them in order to strengthen the Government's tanker fleet. The I.O.C. were meanwhile also trying to ascertain from private operators the market rates for the transport of these products. In response to these enquiries the concern which is mentioned in the notification—The Poonch Kashmir Transporters—quoted a rate of 42 nP per gallon for transport between Pathankot and Srinagar and 11 nP from Srinagar to Sonamarg, inclusive of toll but exclusive of goods tax but subject to a condition as to obtaining route permits to which reference will be made later. The I.O.C. obtained on 26th November, 1962 the contract from the Director General, Supplies and Disposals, Government of India for transporting petroleum and petroleum products in the State under which they were to carry petroleum up to Srinagar and then on to Sonamarg. This

contract was for the period 1st December, 1962 to 30th November, 1963. This contract was worked by them through the New Bharat Transporters, Srinagar a concern owned by Bakhshi Bashir Ahmed, and the main part of Allegation 27 is that this was made possible by the control which the respondent exercised over the issue of route permits for Transport vehicles, as a result of which only Bakhshi Bashir Ahmed could obtain these permits so that none others could compete with him.

14.4. Pausing here I shall summarise the points not in controversy as distinguished from those which are in dispute.

(1) That New Bharat Transporters obtained the contract for transporting I.O.C. products from Pathankot to Srinagar and beyond, is not in dispute. Nor is it in dispute that the New Bharat Transporters was a concern in which Bakhshi Bahsir Ahmed, son of the respondent, was interested. It is said by the Government that he was really the sole proprietor of the company and that the others shown as partners were dummies, and introduced for income-tax purposes, but his case is that this was a real partnership in which he with his sister were only two of four partners. But this, in my opinion, is not of much significance for the purposes of this charge, because it is common ground that he had substantial interest in this concern and was managing its affairs.

(2) That the Poonch Kashmir Transport Company offered rates which were more advantageous to the Indian Oil Co. than the rates which were finally settled with the New Bharat Transporters was not also in dispute.

(3) The matter on which parties were not agreed was whether the respondent did or did not control the issue of route permits for transport vehicles for it is said by Government that it was because of the use to which the respondent put this control that it became possible for the New Bharat Transporters to obtain this contract on such favourable terms. On the other hand, it is the case of the respondent that the issue of transport permits was a matter, which under the Motor Vehicles Act lay within the exclusive jurisdiction and power of the Transport Commissioner and that he himself neither could nor did interfere with the issue of these permits.

14.5. Thus, the real point in controversy is the third of the matters set out above, but before dealing with it, I shall set out the documents which throw some light not merely on the genesis of this contract between the I.O.C. and Bashir Ahmed, but also on the point in dispute.

14.6. The Director General of Supplies and Disposals, Government of India, called for tenders for the supply of gasoline, diesel oil etc. to the Border Roads Organisation in the State of Jammu and Kashmir. The I.O.C. desired to make a tender in response to this invitation, but before doing so, made enquiries from the Transport Department of the State Government as to the facilities that would be available for the purposes of transport and the prevailing rates. The Deputy Transport Commissioner replied to the I.O.C. by document 2 on 6th June, 1962

acquainting them with their position regarding tankers, how this number would be increased later in the year and quoting the rate at which the Department would be prepared to transport. Evidently it was on receipt of this letter that the I.O.C. submitted their tender for the D.G. S&D contract which they did on 26th November, 1962. As the Deputy Transport Commissioner had quoted the rates only between Pathankot and Srinagar, but as these products had to be transported also from Srinagar to Sonamarg, Document 3 was addressed to him inquiring as to the rates for carriage to this place, but no reply was received. The State Transport authorities were thereafter contacted and the Executive Assistant of the I.O.C. addressed the Company's District Sales Manager on 29th August, 1963 (Document 4) and said—

“Since the carriage rates are uniform in J&K, it will be better to give the work to J&K Government Transport. They have plenty of goods carrier to spare for our work. Private Transport contractors have only 30 route permits and as many vehicles for Pathankot-Srinagar route.....The rates for Pathankot to Gulmarg and from Srinagar to Gulmarg are being worked out by the Transport Commissioner's office and Bakhshi Ghulam Ahmed (maternal cousin of Bakhshi Ghulam Mohd.—item 42 of Part 'A' of Schedule 1). These will be sent as soon as I get them.”

After these discussions we have Document 7 which is a letter from Bakhshi Ghulam Ahmed to the Indian Oil Co. quoting his rates from Pathankot to Srinagar @ 50 np per gallon, those from Pathankot to Sonamarg @ 63 np per gallon and from Srinagar to Sonamarg @ 13 np per gallon, which were stated to be exclusive of toll tax and goods tax both of which would be extra. Document 7, however, was not the only offer which the I.O.C. received. They got one from, among others, the Poonch Kashmir Transport Co. Ltd. (Document 8 dated 3rd July, 1962) and this firm quoted—

“From Pathankot to Srinagar 42 np per gallon
From Pathankot to Sonamarg 52 np per gallon
From Srinagar to Sonamarg 11 np per gallon.”

These rates were to be inclusive to toll tax but exclusive of goods tax. They undertake to deposit a cash security of Rs. 25,000/- to be adjusted against bills and also agreed to these same rates for a period of five years. They, however, made a stipulation which is of some importance.—

“I agree to provide any number of tank lorries as you would require provided if your company being a Government concern helps me secure the route permits from the J&K Government.”

On examining these tenders the I.O.C. evidently considered that it would be better if the State Government itself acted as their agents in this matter and so repeated their enquiry as to the rates at which this transportation would be possible for which they got a reply on 13th September, 1962. When, however, the Government was requested to undertake

the job, the Deputy Transport Commissioner replied by Document 21 on 24th September, 1962—

“.....it is to inform you that this undertaking (i.e. the Jammu and Kashmir Transport Department) is not plying tankers on the said route. As such it is not possible for this undertaking to lift the lubricants.”

The Government having refused, the I.O.C. had to resort to private transporters to fulfil their needs. In this context reference may be made to a letter (vide Document 22 dated 9-9-1962) addressed by Mr. Khosla, Sales Officer of the I.O.C. to the Branch Manager at New Delhi which is of some importance. In this letter he said—

“As reported to you in my above letters Sh. Jamwal, Deputy Transport Commissioner is deliberately delaying giving us the rates for reasons best known to him. I had requested your office that Branch Manager may kindly write a D. O. to Transport Commissioner to get the matter expedited.

“The only other party which can cart our products from Pathankot to Srinagar and from Srinagar to Gulmarg is M/s Ghulam Ahmed Bakhshi. The Poonch Kashmir Transport Co. Ltd., Jammu has not permit for long routes. Permits for long routes, as earlier reported by me, are more or less the monopoly of J&K Govt. Transport. Kindly ask the J&K Govt. Transport and Ghulam Ahmed Bakhshi to expedite sending us rates.”

Evidently the resort to Bakhshi Ghulam Ahmed cousin of the respondent came to nothing, or at least we do not know how it dropped, but one thing is clear that both the State Government as well as Bakhshi Ghulam Ahmed disappeared from the scene.

14.7. The tender of the I.O.C. was accepted by the Director General, Supplies and Disposals on 26th November, 1962 and a contract in the usual form was entered into (Document 1), the period of the contract being from 1st December, 1962 to 30th November, 1963. The I.O.C. was, therefore, in a hurry to conclude a contract with a transporter for working out their undertaking. It is at this stage that it looks as if the I.O.C. officials contacted Bakshi Bashir Ahmed. So, far as the documents go, the next in order of date is a letter from the Branch Manager of the I.O.C. to the Nav Bharat Transporters, Residency Road Srinagar which is dated 15th March, 1963 (Document 23). By this letter the Nav Bharat Transporters, a concern whose connection with Bakshi Bashir Ahmed I have already discussed when dealing with the charge covered by Allegation 25, were requested to quote rates from Srinagar to Sonamarg. The reply to this is also dated 15th March, 1963 (Document 24) b which Nav Bharat Transporters assured the Indian Oil Co. that they could arrange an initial number of six tankers and also promised satisfactory arrangements for taking the work in hand. It would be noticed from the facts in Allegation 26, that the Tankers were with Bashir Ahmed of Fairdeal Motors and this statement in the letter

of Nav Bharat shows the identity of the two businesses. Immediately thereafter Nav Bharat Transporters disappeared from the scene and we have the New Bharat Transporters a firm which Bashir says came into existence at this date, emerging to continue the same correspondence. New Bharat Transporters claimed in their letter (Document 25 dated 30th March, 1963) that the letter of the 15th March, (Document 24) purporting to be for Nav Bharat Transporters as their own which would again show the identity of these two concerns) and stated—

“Four numbers of tankers have already been arranged which are standing lined up in Pathankot waiting to be pressed into service. These I should add were the tankers which were obtained by Fairdeal Motors in January-February, 1963 vide Documents 13, 14, 16 and 17 in Allegation 26). Two others are being mounted with tanks and will be ready, we hope by 1st of April 1963 positively.”

and they added—

“With modest pride it may be stated that it was with much difficulty that these six tankers could be arranged and that so soon against a background of total stoppage of truck chassis for sale in the trade” (which indicates that the gravamen of the charge in Allegation 26 is true).

As regards the rates they aid—

“Our rates are completely on par with those of other transport companies carting the products of other Oil Companies in this area. These are 50 np per gallon from Pathankot to Srinagar plus road toll round trip and the goods tax etc. as prevalent at the time of actual cartage.....So far as the cartage of your products from Srinagar to Sonamarg is concerned, this is being examined in its various aspects, our quotations for which will follow in due course of time.” (It will be noticed that this is much higher than the terms offered by Poonch Kashmir Transport Co. which have already been set out).

These negotiations appear to have been conducted with the New Bharat Transporters personally by one Mr. Anant an employee of the I.O.C. to whose services reference in very eulogistic terms is made in the letter (Document 25).

14.8. In recommending the acceptance of New Bharat's offer, Anant wrote a letter on 8th April, 1964 to the Chairman of the Indian Oil Co. which is somewhat revealing. In this letter (Document 26) Mr. Anant stated—

“The only reliable party who can supply us the required number of Mercedes Benz chassis and tanks mounted on them *with route permits into J&K* (underlining mine) are Messrs New Bharat Transporters, Residency Road, Srinagar. We contacted some other haulage contractors who have advised us that they will

not be able to ply the Pathankot-Srinagar route without the required route permits which are very strictly controlled by the J&K Government." (New Bharat had no route permits by that date—they got them only in June, 1963, after their contract with the I.O.C. But the way in which their possession of route permits are referred to shows the degree of confidence they must have conveyed to the I.O.C. officials regarding their obtaining them).

Then, after referring to the letter dated 30th March, 1963 (Document 25) Mr. Anant stated—

"This rate is the same as the rate charged by them from other oil companies (This is not correct as is seen by comparison of the rates quoted by Poonch Kashmir Transport Co. Ltd)....The party has requested that we enter into a contract with them for five years and we recommend doing so on the same terms and conditions as the contract of the other oil companies."

I shall comment about the contents of this letter later. In reply to this we have Document 27 by which sanction was accorded to the Branch Manager to enter into the contract and a formal agreement was entered into (Document 28) on the 25th June, 1963 signed by Bakshi Bashir Ahmed and Mr. Anant on behalf of the two contracting parties. But even, before this formal agreement was concluded, New Bharat Transporters applied to the Transport Commissioner on the 11th June, 1963 (Vide Document 30) for the grant of route permits for six tankers for plying between Pathankot and Sonmarg. This application was granted the next day on 12th June, 1963 and the grant was immediately communicated to the New Bharat Transporters. On 24th August, 1963 New Bharat Transporters made an application for an additional private carrier temporary permit for the route Pathankot-Srinagar-Sonmarg (Document 31) for using an additional tanker and this was granted on the same day. Similarly, an application for two more temporary permits was made on 2nd September, 1963 (vide Document 32) which was granted on the 10th September.

14.9. These applications (Documents 30, 31 and 32) and the grant of the permits applied for immediately they were made is contrasted by learned counsel for the Government with the other cases where applications made for the grant of permits were either rejected or were held up for indefinite periods without any orders being passed on them, for the purpose of showing that applications by Bakshi Bashir Ahmed or other relatives of the respondent were treated on a special footing and were accorded special privileges and favours which were denied to others and it was suggested that this was the reason why other transporters, for instance the Poonch Kashmir Transport Co. made it a condition that the I.O.C. should ensure their obtaining route permits before they would enter into a firm contract for transport.

14.10. It will be seen from what has been said up to now in regard to this charge (and I should add that this point is common to

this as well as the charge in Allegation 19 discussed later) that the advantage which Bakshi Bashir Ahmed obtained over his competitors in the field of oil transportation, was due to the strict control exercised by the State Government over the issue of route permits for transport vehicles, the State Government here meaning the respondent himself. It is said by Government that contrary to the provisions of the relevant statute and the statutory rules on the subject, it was the respondent who personally controlled the issue of these private and public carriers permits and that in this manner he was able to confer undue advantage and improper benefits on those whom he favoured.

14.11. Before entering on an examination of this matter and of the documents and files which have been relied on for the purpose of showing that it was the respondent who exercised a direct control over the issue of route permits for private and public carriers, and was thus able to ensure the channelling of the transport trade to individuals and concerns whom he favoured or to those in whom he was personally interested, it would be appropriate to refer to the defence of the respondent in his reply as also to that of Bashir Ahmed to whom notice was issued under Rule 6(1)(a).

14.12. Taking up first the reply of Bakshi Bashir Ahmed, in paragraph 3 of his reply he states that Mr. Anant, Branch Manager of the I.O.C. approached him and explained his difficulties in regard to getting a suitable contractor, stating that he had been referred to him as the proper person who would be capable of taking up the contract. The position of Nav Bharat Transporters is then mentioned and Bashir Ahmad claims that he arranged for a meeting between Anant and Abdul Rehman a partner of Nav Bharat in which concern according to him he had no interest. After these discussions between Abdul Rehman, and Mr. Anant, Bakshi Bashir Ahmed states that as Nav Bharat had no tankers and found it difficult to secure tankers on hire from anywhere else they approached him for the hiring of these tankers. "Faced with this predicament, Shri Abdul Rehman offered to take this respondent as a partner to which eventually he agreed due to pressure exercised on him by the said Shri Abdul Rehman". How when he alone had tankers of which Abdul Rehman, assuming he was an independent entity, had urgent need, pressure could be exercised on him, is not comprehensible, apart from the story of his having to approach Abdul Rehman for assistance when he had the tankers, being silly to say the least. I have already had occasion when dealing with the charge in Allegation 25 to refer to the relationship to Bashir Ahmed as well as the status and position of this Abdul Rehman and there is no need to repeat the same. This whole story is a tissue of lies which has not even the merit of plausibility.

14.13. He then says that the firm M/s Nav Bharat Transporters was dissolved (even this is not true as would be seen from the dates of the cheques issued by Nav Bharat Transporters which are of late 1963 and even of 1964—which have been referred to when dealing with Allegation 25) and a new firm under the name and style of M/s New Bharat Transporters was constituted as "an association of persons" consisting of Mrs. Shama Mir, Mrs. Santosh Bhasin, Abdul Rehman and

himself and that it was with that firm that the contract was entered into by the Indian Oil Co.

14.14. Paragraph 4 of the reply is somewhat inconsistent with what was stated in paragraph 3 because here he says that the officials of the I.O.C. told him that he was the only reliable person who could be entrusted with the contract though in paragraph 3 he had said that they had agreed to enter into a contract with Nav Bharat Transporters with which according to himself he had nothing to do. Finally, he adds in paragraph 6 that he did not seek the assistance of his father to get the route permits which were granted to him by the Transport Commissioner in the normal course. In support of some of his statements Bakshi Bashir Ahmed has produced a letter purporting to be written by one P.R. Anant, Depot Superintendent of the I.O.C. offering himself as a defence witness. In this letter Anant denies that any favour was shown to Bashir Ahmed by his superiors and that the rates offered by Bashir Ahmed were the market rates and were reasonable. I do not consider this letter as evidence since he has not been examined as a witness and I do not take any notice of the contents of his letter except to say that these are hardly consistent with his letters nearer the events of which he writes e.g. Document 25 from which the relevant passage has been set out earlier.

14.15. The respondent has filed a detailed reply to which I shall next proceed. He denies in paragraph 5 that the Transport Department ever wanted to secure the contract for the cartage of petroleum or the India Oil Co. as also that the Transport Commissioner was directed by him not to negotiate for the carriage contract with the I.O.C. As regards route permits, he has this to say in paragraph 8—

“It is incorrect to say that route permits would not be issued except under the orders of this respondent This respondent invariably used to refer all applications for route permits received by him directly to the Transport Commissioner, who was the authority to pass appropriate orders after examining the facts and circumstances of each case. It is true that quite a large number of people used to approach this respondent for granting of permits, but this respondent invariably after receipt of such applications, referred the same to the Transport Commissioner. . . . Applications directly sent to this respondent used to be strongly recommended by various organisations, Transport Unions, social workers and prominent men in public life, his own Ministers and prominent party workers. In all cases the Transport Commissioner would invariably be asked to examine the merits and pass appropriate orders in the circumstances of each case.”

And he added in paragraph 9—

“This respondent. . . . emphatically denies any suggestion that only this respondent's son could get route permits or that this respondent controlled the issue of such permits.”

Later on he denied in paragraph 12 that he gave any directions to

gentleman is apparently the leader of an opposition political party in the State. With this endorsement of Mr. Premnath Dogra it is passed on, not to the Transport Commissioner but to the respondent who marks it on 13th June, 1963 to the Transport Commissioner who directs his office to put it up with previous correspondence. It is not known what ultimately happened to this application, but one thing is clear that though this applicant had applied as far back as 1958, nothing was done in respect of this application until it obtained the powerful support of political leaders and was brought to the attention of the respondent. Far from helping the respondent in his claim that applications for permits were granted by the Transport Commissioner directly in accordance with the provisions of the Jammu and Kashmir Motor Vehicles Act, this letter shows that without a powerful political backing and support from the respondent, applicants for permits considered that they had little chance of their applications being granted, merely because they owned vehicles and were prepared to operate them in accordance with the law.

14.23. Document No. 7 is dated 9th June, 1959 and purports to be from Mr. Premnath Dogra, Jammu to Mr. Raina, the Transport Commissioner. The writer of the letter states that he was enclosing an application of one Shanti Devi for the renewal of a permit on the Jammu-Srinagar route. He requests that the Transport Commissioner's office might be directed to despatch the renewal order to the writer's Jammu address so that he could pass it on to her. We do not know the circumstances in which the original application was granted and in the absence of this information it is not possible to pronounce upon whether this letter does or does not help the respondent. In any event, it shows that powerful political backing was resorted to in order to obtain even a renewal which on the terms of the Motor Vehicles Act is almost a matter of course, unless there was anything against the applicant for renewal, vide Section 58(2) of the Motor Vehicles Act.

14.24. The last of the letters purports to be from one Ishar Singh of Jammu and is dated 21st November, 1962. It is addressed to the respondent. The writer says that he had arranged to run a vehicle but unfortunately he could not do so because "*there is no permit in our name and also as there is no sufficient capital to purchase the same*". His request is that he might be permitted to ply a passenger bus by changing his private carrier permit. This letter bears several endorsements by way of recommendation, firstly by one Kartar Singh whose identity is not known and which is undated. Then is followed by one by Mr. G.L. Dogra which curiously is dated 25-4-1956 and then by one Kulbir Singh which is dated 20-1-63. This is followed by the recommendation in Urdu of 2 M.L.As. which bear the date 20-1-63 and 21-1-63 both suggesting the grant of a long route permit. My comment on this document is the same and it has not been possible to ascertain the fate of this application and that none of the grounds on which the grant of the permit is sought is within the scope of the relevant provisions of the Motor Vehicles Act. Besides I am not quite sure whether the writer really stated that he had not the means to purchase a permit—which is what the English text would mean. What the respondent did with this application is not known, but it is rather

curious that Shri G. L. Dogra, who was then the Finance Minister, should make a recommendation to the Prime Minister for the grant of this application—a situation which certainly does not help the respondent in his defence. The position is that the eight letters annexed by the respondent to his reply do not support him, far from it.

14.25. Before proceeding further, I have to point out that the respondent has offered no explanation as to how these eight documents came to be in his possession so as to enable him to produce them. Such of these documents which were addressed or forwarded to him in his official capacity and particularly those which by the endorsement they bear show that they were forwarded to the Transport Commissioner for action by him should in the normal course have gone into the files of the Transport Department. His possession of them can be explained only on the basis of their having been taken out of the files by the respondent for his own purpose. When he did so and why, are not ascertainable and since the respondent did not appear after filing these replies, these matters could not be got clarified by me.

14.26. To revert to the main points of the defence which I shall repeat are—

- (a) that the issue of route permits for plying motor vehicles in the State was governed solely by the provisions of the relevant State enactment under which the power to grant or refuse a permit was vested solely in the Transport Controller or Commissioner and that as such he could not be held responsible for the latter's acts or omissions ; and
- (b) that he never interfered with the discretion vested in the Transport Commissioner but that if following the practice prevailing in the State persons addressed their applications for permits to him instead of to the Transport Commissioner, he without exception forwarded these applications to the statutory authority who dealt with them according to law in his own discretion and on the merits of each case.

14.27. On the other hand it is the case of the Government that the route permits for motor vehicles were granted in the State during the period relevant to the enquiry without any reference to the provisions of or criteria contained in the Motor Vehicles Act and that it was the respondent that was virtually controlling the grant of these permits and in support have filed Documents 9 to 18 most of which are entire files. Each one of these files requires detailed examination in view of the defence which has been raised. Of these Documents 10 to 15 are the files of applications by various individuals and organisations for the grant of route permits during the successive years 1958 to 1963. It would be convenient first to take up these six files for the six years named above, before considering Documents 9 and 16 to 18 in view of the contents of the latter.

14.28. In these six files, the point to which my attention was first invited was the circumstance that, it was to the respondent that most

of these applications were addressed, though under the Motor Vehicles Act, the primary authority capable of granting the permits sought was the Transport Controller (designated Commissioner at a later date). I do not, however, attach any great importance to this feature, since the respondent admits this, and explains it as due to the prevailing practice in the State—an explanation which is fully borne out by the files relevant in regard to this as well as other allegations. Besides, the applications, in most cases, bear the endorsement of the respondent marking them to "T.C." If the Transport Commissioner dealt with these applications on their merits by himself, when they were forwarded to him, no inference adverse to the respondent could, of course, be drawn from the mere fact that the applications were addressed to him personally.

14.29. Apart from this feature which I consider as readily trivial, a close examination of these files reveals matters to me which are of a gravely disturbing nature for they point to a complete departure from law in the matter of the administration of the Motor Vehicles Act which is calculated to undermine and destroy the salutary provisions of that enactment. Whereas the Act intended its provisions and the control it contemplated as means of advancing public interest by providing an efficient transport service, it appears to have been subverted by being made a tool or a machinery for the grant of favours. This in the context of the geographical and other features of the State, appears to have aggravated the evils which the deviation from the provisions of the Act had caused. The geographical factors which I have in mind are that Pathankot is the railhead nearest to the State and this itself is over 60 miles from the important city of Jammu and over 250 miles from Srinagar. As the State is dependent upon the import from other areas of the country of most of the articles needed for the life of the community and has also to export the large volume of its precious handicrafts and the produce of its orchards, the value of an efficient motor transport service on its roads assumes crucial and vital significance. For developing the economy of the State as also for the free movement of goods within the State itself, a well-organised transport system was and is an essential need.

14.30. The Jammu and Kashmir Motor Vehicles Act, 1998 passed in 1941—is substantially identical with the Indian Motor Vehicles Act of 1940. Part IV of the Act dealing with the control of transport vehicles specifies in sections 52 to 57 matters to be taken into consideration in granting or refusing to grant route permits. Section 52 specifies what an application for a private carrier permit should contain and this includes the type and carrying capacity of the vehicle and the nature of the goods which the applicant expects to carry and section 53 enacts—

"The registering authority shall, in deciding whether to grant or refuse a private carrier's permit have regard to the condition of the roads to be used by the vehicle or vehicles in respect of which the application is made".

It would thus appear that apart from conditions which may be imposed by the registering authority as regards the axle weight of the

vehicle etc., these permits are to be granted provided there was nothing against the applicant (a) to a person who is in possession of a vehicle ; when (b) the granting of it would not be much in excess of the needs for carrying the load available ; and (c) the density of the traffic poses no hazard and lastly (d) the condition of the road and bridges etc. can bear the volume of such traffic. Coming next to permits for public carriers, here again section 54(b) which sets out what an application should contain, refers to the type and carrying capacity of the vehicle and—

- (i) the manner in which it is claimed that a public need will be served by the vehicle ;
- (ii) such particulars as the registering authority may require with respect to any business as a carrier of goods for hire or reward carried on by the applicant at any time before the making of the application, and of the rates charged by the applicant.

The matters which the registering authority has to take into account in deciding to grant or refuse a public carrier's permit are set out in section 55 and *inter-alia* these are—

- (a) the interests of the public generally ;
- (b) the adequacy of existing road transport services for the carriage of goods upon the routes or within the area to be served and the effect upon those services of the service proposed.

Section 55 also makes provision for taking into consideration representations by other persons before granting the permit. Section 57 prescribes the time at which these applications may be made. There are provisions for appeals against orders of the registering authority who in the present case was the Transport Commissioner, but there does not appear to have been any case of the statutory right of appeal having been exercised. That, however, is a subsidiary matter.

14.31. From the above provisions what appears to me the basis on which the Act proceeds is—

- (1) that a permit is intended to be used for running a vehicle possessed or owned by the applicant. From this it would follow that permits are not looked upon as a species of property which could be sold, leased or hired out to others to enable the purchaser or lessee or Lirer to run their vehicles. In fact trafficking in permits is a type of transaction which is contrary to the spirit and purpose of the Motor Vehicles Act and which in the States with which I am familiar is looked upon as a piece of impropriety or misconduct committed by transport operators which would entail penalties on them by way of refusal of any further permits and even cancellation of permts already existing ;

- (2) That in the case of public carriers, the Transport authority would make an objective appraisal of the traffic needs to determine the number of vehicles needed, taking into account the condition of the roads and other relevant factors and normally invite applications for this number of permits ;
- (3) That even if there were no invitations by the Transport Authority subject to the condition of the roads, an adequate number of permits would be issued to applicants who are not disqualified and who have the facilities for rendering an efficient service to enable the needs of the public for motor transport to be satisfied ; and
- (4) Permits are granted on considerations of public interest in obtaining an adequate and efficient transport service and the grant is not conceived of either as an act of charity to those afflicted by misfortune or poverty or as a reward for past or present political or social service.

14.32. But, as I shall show presently, several if not most of the applications which are found in the files Documents 10 to 15 appear to be from persons who owned or possessed no vehicles but who desired to obtain the permits to eke out a living by leasing or hiring these permits to others who might own or possess vehicles. Besides it looks to me that it was because a sufficient number of permits particularly public carrier permits was not issued, that permits acquired a scarcity value so that the profit derived by those who were able to get them proved to be so inordinately high that they were so much sought after as a source of easy and comfortable living by leasing them. In other words, the permit holders were so few compared to the number of vehicles needed that they enjoyed a virtual monopoly. In saying this I have in mind the extraordinary profits derived from these permits by Bashir Ahmed from his I.O.C. contract as well as by Abdul Rashid's group with which allegation 19 is concerned to be examined later.

14.33. The grounds upon which the applicants in Documents 10 to 15 based their claim can save as regards a few be broadly divided into two :

- (1) for relief of poverty ; or
- (2) as a reward for political affiliation past or present, or services claimed to have been rendered to the country or to the ruling political party.

Typical of the grounds on which applications were made is one on behalf of the Swarn Harijan Welfare Society by its Secretary dated 20th June, 1959 (vide page 29 of Document 11). The Secretary of the Society makes this application and after stating that the Society had no vehicle, he says—

"It is very easy for the Government to help the society by granting motor routes, Delhi to Kashmir, Jammu and Pathankot, which will increase the income."

This application was addressed to the Transport Minister Mr. Sham Lal Saraf who forwarded it to the Prime Minister, the respondent "with compliments" and was marked by the latter to the Transport Commissioner. I am citing this for the purpose of showing the grounds on which several of these applications are based and this is typical of them besides to draw attention to the circumstances of the Minister for Transport forwarding an application to the respondent for which there can be no explanation other than that he controlled the issue of permits. If the applications had to be considered in the light of the criteria laid down in the Motor Vehicles Act, it would be clear that very few of the applications in the files could be granted, but as evidently the basis upon which they were granted were those found in the applications, there could not be any assessment of the merits of the applications on the principles laid down by the Act, and it had really to be subjective and that is possibly the reason why there has been occasion for quite an amount of pressure, of discrimination and of interference.

14.34. Besides disclosing this state of affairs as to the criteria expected to be adopted, it is found that in several of these applications which were forwarded to the Transport Commissioner nothing was done and these are evidently some of the cases in which there was no intervention by the respondent, for in some of them it appears that there could have been no objection on the merits to the grant of the permits sought. Besides in these files there are several applications which are stated to have been submitted on the verbal instructions of the respondent so that the statement of the respondent that he had nothing to do with these applications or their grant does not seem to be correct.

14.35. I now propose to set out details of these applications from these files under the following headings—

- (1) Applications from persons not owning or being in possession of any vehicle—and made obviously for the purpose of leasing the permits if granted to others owning the vehicles, which would incidentally indicate that persons owning vehicles might not all of them have been able to obtain permits in their own names or on their own applications.
- (2) Applications by persons not owning vehicles and grounded on their indigent or unfortunate circumstances and seeking these permits as a method for eking out a livelihood.
- (3) Applications by persons also not owning vehicles, grounded on their political affiliation or past services to the political parties.
- (4) Applications from owners of vehicles received by the Transport Commissioner but on which nothing was done though it is not apparent why the applications were not ordered.
- (5) Improper rejection by the Transport Authorities.

(6) Applications which state that they had been submitted on the verbal instructions of the respondent.

- | | |
|--|---|
| Applications of
1958 Document
10 . . . page 8. | (1) Applications by persons whose applications either state or show that they did not own any vehicles. |
| | (i) Application of Faiz Ahmed son of Mohd. Ramzan, Residency Road, Jammu. |
| page 12. | (ii) Application of Sham Lal Bhan, son of Pt. Ram Chand Bhan, an employee in the Transport Undertaking. |
| page 48 | (iii) Application by S. Durjee, Leh, Ladakh. |
| Document 11
(1959) page 4 | (iv) Application dated 26-9-59 by Thakur Uday Chand—requires a route permit in order to enable him to purchase a vehicle. |
| Page 28 | (v) Application of Prannath dated 24-1-59 praying for a route permit. |
| Page 49 | (vi) Application by Mastan Singh dated 10-6-59. |
| Page 51 | (vii) Application by Balwant Singh dated nil. |
| Page 63 | (viii) Application by Abdul Rashid Ahangar dated 15-10-1959. |
| Page 71 | (ix) Application by Ghulam Mohd. Baltey dated 29-9-59. |
| Document 12(1960)
Page 9 | (x) Application by Abdul Ghani Shapoo dated 14-7-60. |
| Page 10 | (xi) Application of Abdul Aziz and others dated 26-9-60. |
| Page 105 | (xii) Application dated 4-7-63 of Janak Lal Sahgal who says he was an advocate of Jammu, praying for the grant of a route permit in his favour for Jammu-Srinagar as the same was required for the business of his son. |
| Document 13 (1961)
Page 15 | (xiii) Application of Gauri Shanker Khajuria dated 15-8-1961—a repeat of an earlier application dated 24-4-1960. |

- Page 107 (xiv) Application of Mohd. Maqbool Bhat of Khanka Mohalla Srinagar dated 23-5-61. States that he was promised by one of his friends a route permit and on that understanding had purchased a bus chassis and built a body on it at a cost of Rs.40,000/-. His friend he states went back on his promise and the vehicle was, therefore, idle. On this ground he requests the grant of a permit. It bears the endorsement by the respondent marking it to the "T.C." on 7-7-61.

(I should add that all the above applications except item (xii) dated 4-7-63 were addressed to the respondent and that application was to the Transport Commissioner).

(2) Applications by persons grounded on indigent circumstances.

Document 11

- Page 6 (i) Application dated 23-7-59 by Abdul Aziz Dar praying for a route permit for a vehicle by way of relief to enable a family of 50 members who were flood-victims, to pull on in hard times.

- Page 36 (ii) Application dated 4-6-59 by Padma Rani Suri (not owning a vehicle). After stating that she was the widow of L. Harbans Lal Suri, Vice-President of Bakshi Nagar, Jammu, says that she has nine children. A request is, therefore, made to save the children from starvation by granting her a long route permit from Pathankot to Srinagar.

- Page 58 (iii) Application dated 18-9-59 by Thakra Singh—wants a route permit for one of the following routes :

Jammu to Poonch
Jammu—Chamb
Jammu—Pathankot
Jammu—Kashmir

because he was a poor man with a large family and with no source of livelihood.

- Page 79 (iv) Application of Manjit Kaur dated 2-1-59 for the grant of a route permit for relieving her poverty.

Page 85

- (v) Application dated 20-2-59 by Bakshi Dalip Singh for the grant of a route permit to enable a widow to support the education of her children.

Document 12

Page 42

- (vi) Application of Amrik Singh dated 22-6-59 in which he points out the miserable condition of his family and prays for the grant of "a couple of permits on Jammu-Srinagar route so that we may be able to earn our livelihood and be able to carry on the peaceful avocations of our lives."

Document 13

page 1

- (vii) Application by Kapur Singh dated 17-5-61 on the grounds that he was without any source of livelihood.

Page 81

- (viii) Application dated 5-10-61 of Mohd. Aziz. It is sufficient to refer to the heading which reads : "for issue of a route permit in favour of the applicant from Jammu to Poonch route, as the applicant has lost Rs. 18,000 and at present there is no one except God to help the applicant".

(All these 8 applications were addressed to the respondent)

(3) Applications by persons on grounds of political affiliations.

Document 10 (1958)

Page 50 (i)

- Application by Balwant Singh claiming to be an old Congress worker and a political sufferer actively associated with the national movement—requests two public carrier permits or two 'B' class permits between Jammu—Srinagar.

Document 11 (1959)

Page 44 (ii)

- Application dated 3-1-59 by Abdul Rashid Lohar addressed to the respondent. Describes his financial and economic conditions and attributes his tribulations to his devotion to the National Conference adding that the General Secretary (presumably Bakshi Abdul Rashid respondent's cousin) must have informed the respondent in detail. On this ground he requests that a route permit may be granted to him so that he may be able to earn his livelihood.

Document 12 (1960)

Page 74 (iii)

A personal letter addressed to the respondent dated 25-7-60 from Ved Prakash Rathore. Makes a prayer on the ground of his services to the Party (the National Conference) and says, "If you want, the best way to help me is to issue a route permit in my favour. This will not involve any direct expense on the Government and I too will be benefited by regular means of income".

Document 13 Page 40 (iv)

Application of Hari Ram dated 25-4-61. After setting out the condition of his family and what he had done for the national cause, he states that "I humbly knock at the door of your bounties to graciously come to my rescue" and this by the grant of a route permit in his favour to get himself free from financial stringencies and save his dependents from starvation.

Document 13 Page 41 (v)

Application of Swami Raj Dogra dated 16-8-61 in which he states that it was beyond his financial resources to purchase a truck but claims that on the facts stated regarding his financial condition and his earlier history he had a right to claim a permit and so prays for the grant of one for the long route.

Page 92 (vi)

Application dated 30-6-61 by Ghulam Kadir Bhat based on his claim to be a worker of All Jammu and Kashmir National Conference.

Page 95 (vii)

Application dated 17-8-61 by the President, Anjuman-e-Sharai-Shian, Jammu and Kashmir State, Badgam praying for the grant of route permit to the children of deceased Ghulam Hussain who died in Pakistan leaving his children destitute.

Page 115 (viii)

Application dated 17-6-61 from Gian Chand Mirpuri. He says that he is a refugee reduced to pennilessness and leading a life of misery. So he submits that two bus route permits may be issued (one from Jammu to Pathankot and the other from Jammu to Chamb) so that he is rendered able to pay off his debts and lead a peaceful life.

Document 14 Page 11 (ix) Application dated 15-9-62 by Viliat Kour widow of Late S. Mohan Singh—request to take compassion on her indigent condition and be merciful to her by granting her two J&K route permits because at one time her husband possessed two permits.

Page 39 (x) Application dated 4-4-62 by Ghulam Ahmed Farash on grounds of having worked for the National Conference. Prays for the issue of a lorry permit in his favour so that their finances may be restored.

(All the above applications were addressed to the respondent).

(4) Cases in which though applications were received by Transport Commissioner—nothing was done.

Document 10 Page 34 Application dated 9-5-58 addressed to the respondent by Prem Nath Koul Ghazi had a vehicle and *prima facie* entitled to a permit. Though the application was forwarded to Transport Commissioner, nothing was done. Might indicate that without specific orders—verbal or otherwise of some one—presumably of the respondent—Transport Commissioner made no grant.

(5) Improper rejection of applications.

Document 10 Page 61 I am unable to fathom the reasons for the order on an application by Abdul Rashid Butt of Chattabal, Srinagar which was addressed to the respondent with copy to the Transport Commissioner. The traffic authorities write to him on 27-7-57—"Please be informed that no permit is available for issue on Srinagar-Jammu / Pathankot route." though the files show the grant subsequently and even at the same time of several permits on this route. The only inference possible is that there was no recommendation by the respondent and the permits are reserved for others.

(6) Applications stated to have been submitted on verbal instructions of the respondent.

These have to be read in conjunction with the circumstances that from 7-9-60 to 7-4-62 the respondent was not the Minister incharge of Transport.

Document 11 Page 3 (i) Application dated 15-12-59 by Ghaneshyam Gandotra addressed to the respondent "submitted as per verbal instructions" of the respondent.

Page 13 (ii) Application by Ghulam Qadir Lone—addressed to the respondent says he approached the respondent to favour him with a route permit. There was then a direction to Transport Commissioner and he, therefore, approached the Transport Commissioner and adds—

"I was encouraged only with this that if the Hon'ble Prime Minister directs him to issue the same, in that way this requisite permit will be issued."

Page 25 (iii) The contents of this application to the respondent dated 7-2-59 by Krishna Devi are somewhat curious. She states that she is a widow whose husband in his life-time had two buses which were plying in the State. She states that she has since lost both the vehicles though the registration certificate of one of them continues to remain with her. After stating the miserable position of her family she prays for the route permits for two vehicles which were no longer hers and finally she adds—

"In Delhi I appeared before your nobleself and you were pleased to say that I should appear before your nobleself at Jammu. Now I came from Delhi, as directed by your goodself. It is, therefore, requested that my case may kindly be considered favourably and the permits as mentioned above may kindly be issued in my favour."

Document 11 Page 45 (iv) Letter to the respondent dated 4-2-59 by Mohd. Maqbul describing himself as an ex-Additional Collector Kashmir Province. He writes—

"I should feel highly grateful if you would very kindly grant me long route permits for two trucks at least. With thanks in anticipation."

At page 77 of this file is a letter from Mohd. Maqbul dated 16-3-59 addressed to Mr. Raina the Transport Commissioner in which he says after referring to his request for two long

route permits for two trucks—

"I approached the Hon'ble Prime Minister who was kind enough to promise me that he would grant me only one such permit towards the end of the current month (March 1959).... Could you very kindly keep me under a deep debt of obligation if you would just remind the Hon'ble Prime Minister of his promise to me, at the time he may sanction the allotment of permits."

Document 12 Page 125 (v) Application dated 11-4-60 to the respondent by Shiv Nath Nanda which is a repetition of a previous application in which he states that he had applied on 25-12-57 on which the respondent made an endorsement on 18-4-59 marking it to the Transport Commissioner with an oral direction to the applicant to meet the Transport Commissioner personally and hand over the respondent's orders to him. He says he did it and appeared before him on 22-4-59. He also states that the Transport Commissioner told him that he had talked about this matter to the respondent and that the latter had given him the order to grant the permit. The complaint is that notwithstanding all this nothing had been done and when he saw the Transport Commissioner again on 14-5-59 he was put off by him on the ground that no definite orders had been given by the respondent. He says that thereafter on 29-5-59 the applicant saw the respondent at his residence when the latter again promised and assured him that his request would soon be granted. The writer is complaining about this delay of more than a year and winds up with a request that the orders promised might be passed soon. With this letter are enclosed the earlier applications.

Document 13 Page 39 (vi) Application dated 12-4-61 of Brahmachari Lilanand Shakta addressed to the respondent. The writer was interested in the construction of an Ashram for which he was gathering funds and he writes—

"I approached your goodself.... and requested your honour for your personal help for the Ashram in the shape of issuing me a permit for plying a truck on the routes either Pathankot-Srinagar or Jammu-Pathankot to enable me to

get some financial aid to construct and run the Ashram. You very kindly informed me that issue of permits for these two routes has been suspended for the present and gave me a letter for Hon'ble Shri Partap Singh Kairon, Chief Minister of Punjab."

This recommendation had not yielded any satisfactory result. He, therefore, says that he approaches the respondent again with the request that "if permits for the said routes are not possible, I may please be granted permits for other routes, viz. Jammu-Banihal or Jammu-Srinagar which is in your power" and this is marked to the Transport Commissioner by the Under Secretary, P.M.'s Private Office.

Document 13 page 105
(vii)

Application to the respondent dated 4-10-61 from Mujahid Kamal Khan—states that he desires to ply a bus and a truck between Pathankot and Jammu for which he wants route permits. In connection with this, an application on page 108 addressed to the Private Secretary to the respondent may also be noticed. In this the writer say—

"Janab Bakshi Sahab had kindly promised to me when he came to Delhi early in April 1961 that permits for trucks to my sons (1) M. Kamal Khan and (2) Siful Islam Khan, would be given by the Transport Authority, Jammu and Kashmir State in due course.... It is hoped that Mr. Raina would now do the needful soon.... I am enclosing the application to the Transport Authority so that you may kindly get the orders from Janab Bakshi Sahab and pass on the application for necessary action."

It will be recalled that neither in April nor October 1961 was the respondent the Minister of Transport.

Document 14 Page 24

(viii) Application to the respondent by Ghulam Nabi dated August 1962—states that the respondent had granted him a route permit temporarily in November, 1961 but the same had been stopped. When approached the respondent had promised him to get the same permit renewed but it had not been done yet. Prays for this relief.

14.36 I have made a selection of applications which are typical and the files contain several of the same kind to which I have not referred, so as not to cumber the report. It is not possible to find out without extensive and elaborate investigation as to what happened to these applications and this I have not thought it necessary to embark on particularly in view of the evidence afforded by certain selected cases which are to be found in Documents 9, 16 and 18.

14.37 I should, however, add that if I had to proceed on the basis of Documents 10 to 15 alone, I might have held that though a very strong suspicion had been raised which would greatly probabilise the Government case, but still that the charge of direct interference had not been clearly brought home for the reason that the effect of the respondent's interference is not clearly seen but there is another material in the shape of Documents marked 9, 16 and 18 which, as already stated require detailed consideration.

14.38 Taking up Document 9 first - page 2 of the file which is Document 9, is a letter dated 18th April, 1961 from the Registrar of Cooperative Societies to the Secretary, Agriculture Department, J & K Government, Jammu. The Registrar says that a representative of the Indian Oil Co. had come to see him in his office on the 9th March, 1961. What transpired at the meeting is set out and the Minister (for Cooperation) was also informed of the discussions that were then held, which related to the cooperatives taking up the transport of kerosene oil in the State. He then proceeded, "The most important point for consideration in this connection is the grant to the cooperatives of private carrier permits for six tankers in absence of which the work (of transporting kerosene oil for the I. O. C.) will not be a business proposition at all..... While the Cooperatives can and have almost been able to secure the agency of the Indian Oil Company, they are faced with the problem of the permits for tankers which to my mind is a requirement necessary for the successful working of the Cooperatives as agents of the Indian Oil Company.

"It may be mentioned here that Indian Oil Co. has taken a decision already that they shall patronise the Cooperatives only and they have been in pursuance of this policy been appointing Cooperatives only in other States....."

That the Indian Oil Co. were also endeavouring to get this permit for the Cooperative Federation is borne out by the contents of Document 17,—a letter from the Executive Assistant of the Indian Oil Co. then at Srinagar one Mr. B. S. Khosla to the Branch Manager of the Company at Delhi. In paragraph IV of this letter dated 5th July, 1962, Mr. Khosla after referring to the needs of the Cooperative Society to obtain the permits stated—

"It gives me great pleasure to inform your goodself that the Minister (i. e. for Cooperation) has recommended

to the J&K Government sanction of four route permits (3 for T/Lorries and 1 for Goods Carrier) for the above Federation. Shri Aga, Registrar Co-ops still is of the opinion that the IOC must approach the P. M. J&K through the GOI, if this work is to be really got done. Kindly get the needful done".

Apparantly, even this failed, for we find that the Deputy Secretary to Government, Agriculture Department is still at it, as seen from his letter dated 16th July, 1962 to the Secretary to Government, Home Department (No. 15/60-Coop). The Deputy Secretary stated—

"..... Route permits for four trucks..... may kindly be sanctioned in favour of the Jammu and Kashmir Supply and Marketing Federation Jammu for import and distribution of Kerosene oil in this State An early action in the matter is requested".

The Home Department forwarded this with the enclosure (letter No. 655/M-18 dated 18-4-1961 from the Registrar Cooperative Societies) in original to the Transport Commissioner, Srinagar "for necessary action" under their No. 7R-34,62 on 27th July, 1962 which reached the Deputy Transport Commissioner on 30th July, 1962. Yet nothing was done by way of the grant of the permits asked for. The Registrar of Cooperative Societies wrote direct to the Transport Commissioner vide his letter No. 417/GOI 54 dated 20th April, 1963 pointing out—

"Since this Society has no permit to ply a Tanker it is not in a position to supply Kerosene oil to the Co-operative in Kashmir at competitive prices. As it is the Government's intention to utilize Cooperatives as a rival to the private trade so as to facilitate competitive trading it is necessary that the Cooperatives have the same facilities for carriage of kerosene oil as the private trade has. I would, therefore, request you to consider the case of the Society for the grant of a permit to ply a tanker between Pathankot and Srinagar."

He went on to add—

"I would propose that the Kashmir Peoples Co-operative Service Ltd. Srinagar may be given a permit to Ply a Tanker for carriage of edible oils from Pathankot to Srinagar."

This reached the Deputy Transport Commissioner on 25th April, 1963 but yet nothing was done. A reminder was sent by the Under Secretary, Home Department to the Transport Commissioner on 16th May, 1963 (No. TR-120/62) in which

he said—

"I am directed to refer you to the Deputy Secretary to Government, Agriculture Department's (letter) ... regarding the above noted subject (Route Permit) and to request you please to intimate the action taken in the matter."

with copy to the Secretary, Agriculture Department. The Secretary, Agriculture Department not having received any orders from the Transport Commissioner or any information from the Home Department either, addressed a D O. letter No. 15/60-Coop. on the 25th April, 1963 to Mr. Sharma, Secretary to Government, Home Department. After referring to the earlier correspondence, he said—

"More than eight months have lapsed and we have not heard anything from you upto now. The Registrar Cooperative Societies has again represented that the Society having no route permits to ply its tankers from Pathankot to Srinagar is not in a position to supply kerosene oil to the Cooperatives in Kashmir at competitive rates. The policy of the Government is to utilise the Cooperatives as a rival to the private traders to hold the price line in the country especially in the present emergency".

And he finally stated--

"I am therefore directed to request you that the matter may kindly be placed before the Prime Minister at your earliest convenience and the necessary route permits got issued, in favour of the said society."

That it was through the Prime Minister and through him alone that the permits could be obtained, was not the view held solely by Mr. Ghulam Nabi, Secretary to the Agriculture Department who wrote the letter from which I have quoted an extract, but even more significant is the D. O. letter dated 16-5-63 in reply to this from Mr. Sharma to Mr. Ghulam Nabi in which he said—

"The matter has already been referred by this Department to the Transport Commissioner for his comments which are yet awaited. He is again being urgently reminded. As soon as I hear from him, the case will be submitted to the Prime Minister (Minister incharge Transport) and necessary orders obtained."

A copy of this letter was forwarded for information and favour of immediate action to the Transport Commissioner.

14.39 Last in this series we have a note put up in this office of the Transport Commissioner for his consideration and

after referring to the letters received from the Agriculture Secretary, Registrar of Cooperative Societies and the Home Department for the grant of a tanker permit, it states—

"The Secretary to Government has asked for comments for obtaining the final orders of the P.M... May we submit (to) the Government that we are prepared to give permit or in case of otherwise guidance is solicited as to what comments be forwarded".

(underlining mine).

So long as the respondent held the office of the Prime Minister, no permit was granted to this Cooperative Society.

14.40 Great reliance has naturally been placed by learned counsel for the Government on what was stated in these letters by the Secretary in the Home Department in which he states that after the Transport Commissioner's consent is received, the case will be submitted to the Prime Minister and orders obtained. The fact that notwithstanding the declared policy of the Government to encourage cooperatives and the interest which the Registrar of Cooperative Societies as well as the Secretaries in the Home Department and Agriculture Departments and possibly the Minister in charge of Cooperation took in the matter, the Transport Commissioner was evidently not in a position to pass any orders in regard to this application and that everything had to depend upon the respondent's directions clearly establishes that he effectively controlled the grant of these permits and that the Transport Commissioner would grant them only either on his direction or, when he was satisfied that the respondent desired their grant or at least would not object to their being granted. Learned counsel for the Government naturally and properly contrasted the fate of these applications with the speed with which the applications of New Bharat Transporters were granted.

14.41 Document No. 16 is a file of over 250 pages entitled "Part I J&K Government Transport—Issue of Route Permits—" which contain orders by the respondent himself for the issue of route permits to different persons. The contents of this file are really interesting. Page 1 is a Memo No. 431/Traffic dated 10th October, 1956 from the Transport Controller Mr. S. M. Aga to the Secretary to Government, Home Department, enclosing a long list of vehicles together with the names of their owners "who were authorised to use these vehicles temporarily under orders of the Prime Minister. (Under Section 62 of the Jammu & Kashmir Motor Vehicles Act, 1938 temporary permits have to be issued only by the Transport Controller). The temporary need being over, the permission given to these vehicles to ply had been withdrawn and the owners had been asked to secure regular permits. "Meanwhile the Prime Minister has been pleased to order that temporary permission in respect of these vehicles

may be extended upto end of December 1956. Confirmation of the verbal orders of the Prime Minister may kindly be obtained and conveyed early."

14.42 On page 2 of the file, on 20th March, 1957, is a communication from the Secretary to Government, Home Department to the Transport Controller conveying to him—

"Confirmation of the verbal orders given.....by the Prime Minister for authorising use of the vehicles listed in the enclosure.....the temporary permission being extended upto end of December 1956."

Page 9 of this file again contains a list of passenger vehicles for which temporary permits had been issued to meet the demand of influx of visitors to the Kashmir Valley and it states—

"These permits were issued from time to time under the verbal orders of the Prime Minister. Formal confirmation is sought for and may be communicated."

And pages 10 and 11 contain a list of the vehicles as well as the names of the owners

14.43 Page 22 of this file is a Memo containing two lists showing the names of persons in whose favour public carrier and stage carrier permits were issued temporarily as shown against each which had subsequently been renewed from time to time under orders of the Prime Minister. It says—

"Orders are solicited if these permits be renewed and the period specified."

The memo is dated 3rd August, 1957 and it contains the following endorsement—

"This was submitted on 3-8-57 to the P. M. personally. He was pleased to order that extension be given for another period of four months from the date of expiry". And it is signed by the Transport Commissioner Mr. S M. Aga.

14.44 The President of the Kashmir Motor Drivers Association made a petition to the Prime Minister (page 27) to grant the Association temporary permits for a number of passenger vehicles specifying the registration numbers of their vehicles which were 14 in number. The note by the Transport Controller dated 15th August, 1957 in respect of this representation is to be found on page 26 of this file and it reads—

"This was put up to the Prime Minister by the representatives of K. M. D. Association. He was pleased to order that this request will be considered along

with similar cases where temporary permits have already been granted."

The next instance relevant to the present point in the file, is an application to the Prime Minister which is found on page 33 by one R. S. Madan who claims to have served "the national cause of this State for the last twenty years" alongwith his family. After describing the privations which he had suffered Mr. Madan stated, 'Having secured two trucks on hire purchase I am in a difficulty for two permits chits. I approach your goodself with the request to please favour with two permits for the same.' This application is dated 4th December, 1956 and it was put up before the respondent on 6th December, 1956 when he noted —

"Yes, G. M. Bakshi
6/12"

and forwarded it to the Transport Commissioner. We have the formal order on page 32 of the file dated 9th December, 1957 and this reads --

"Temporary permission valid for four months for operation of two trucks on Jammu-Srinagar route may be issued in favour of R. S. Madan. His application together with the orders of the Prime Minister is enclosed herewith."

1445 Page 37 of the file is a noting by the Traffic Superintendent dated 27th February, 1958 which states —

"The Prime Minister has been pleased to issue verbal orders to me personally for issuing temporary permits to Wazir Paras Ram of Katra and M/s Mustaq Ahmed and Manzoor Ahmed of Banihal for a period of three months."

The next relevant application on this file is one dated 10th December, 1957 (page 46 of the file) by one Ladha Singh, Jammu. It was addressed to the respondent. It recites the fact that the respondent granted the applicant an interview. He states that though originally he had several transport vehicles, he has not got even a single vehicle on that date and that consequently he was on the verge of starvation. He asserts that he had been in the transport business for the past 32 years and was engaged in no other line and on this ground he wants to be granted a permit. This application was granted by the respondent and the endorsement on the request is in these terms —

"P. M. ordered to issue a permit to the applicant for Jammu-Srinagar route. This application has been handed over by the P. M. to the undersigned personally at his Jammu residence today".

And this is confirmed and dated 19-4-58. It is true that the verbal orders of the respondent are shown to have been confirmed later, but not much could be built on this fact, because

(1) what I am now on is whether permits were being granted at the discretion of the Transport Controller as contemplated by the Motor Vehicles Act on the merits of the application and on the basis of the criteria laid down in the Act or whether it was the respondent who controlled their issue and directed their grant at his discretion; and

(2) having regard to the time lag between the verbal orders and the confirmation, and also having regard to the confirmation being made only when a request was made for the purpose, the absence of a confirmation on the file would not negative the existence of an unconfirmed verbal direction.

On page 181 of the file is a letter from T. Singh Bali dated 9th January, 1960 to the respondent saying—

"In the month of November 1958 I approached your goodself with the request to grant me 4 (four) long route Truck permits from Srinagar to Lakhanpur or Lakhanpur to Jammu..... At that time you were kind enough to promise me that these permits would be granted to me in January or February 1959 But since then nothing was done in this respect. I would, therefore, most humbly and respectfully request your kindself kindly to issue these four permits in my favour as promised by you, so that I might be in a position to start my business without any further loss of time."

There is an endorsement that—

"A temporary permit for truck for Jammu—Srinagar may be issued for 4 months only as a special case"

and it was issued on 7th December, 1960 (There is no endorsement of the respondent on this letter).

14.47 Lastly we have an application on page 252 by Sham Lal Sopori addressed to the Prime Minister. The applicant states that he has been employed in the Transport line for over 30 years, but now he has been retired. He does not have even a single route permit which would keep him alive. He, therefore, requests that he may be granted a route permit to enable him to maintain himself and his family. The endorsement of the respondent on the margin is "Yes" followed by his signature and the date 5-8-62.

14.48 I have only to add that though the respondent had inspection of Documents 9, 16, 17 and of 18 dealt with

later, before he filed his reply, he has no comment to make or explanation to offer as regards the contents of these documents.

14.49 What remains to be referred to now in this group is Document 18 which is from the file of the Transport Department—Route Permits—Part III it starts with a memorandum addressed to the respondent by the Transport Commissioner Mr. S. K. Raina and is dated 7th August, 1963. It starts by stating that several temporary permits had been issued as set out in the note and the note sets out 123 such permits. Though these several temporary permits were granted only a few of the permit holders were able to arrange vehicles for operation against the permits and even in regard to these they were second-hand ones which had been obtained with great difficulty as new chassis were not available. The situation, therefore, was that there were quite a number of sanctioned permit holders who did not have any vehicles to cover their permits. This was stated to be due to the Government of India having imposed a curb on the distribution of transport vehicles—a matter to which I have adverted in dealing with Allegation 26 and which goes on—

"As a result of total non-availability of transport vehicles in the market, all the permit holders as indicated in the annexure may not be in a position to come forward for utilization of their permits for reasons beyond their control and they have represented that until such time they are able to procure vehicles their permits may be kept in tact."

The suggestion for action is contained in the penultimate paragraph and it reads—

"It is a matter for consideration if the permits be held valid till such time as the permit holders are able to arrange their vehicles"

On the margin the respondent has written in his own hand

"Yes"
and signed it, and having obtained these orders the Transport Commissioner forwarded it to the Deputy Transport Commissioner (Enforcement) stating:—

"n/a (necessaay action) may be taken in view of P.M.'s orders"

The further notings on this file which were made after the respondent ceased to hold office, I am not referring to.

14.50 This completes the material that has been placed before me for the purpose of substantiating the charge contained in the allegation. The question now for consideration is whether

this material in Documents 9 to 18 does establish, as the Government contend, the charge that by the abuse and exploitation of the official position of the respondent New Bharat Transporters were able to secure the transportation contract from the I. O. C. against competing transporters quoted lower rates.

14.51 Before proceeding further there is one matter in respect of the charge which might be considered in limine and put aside, and that is in relation to the Government of Jammu & Kashmir withdrawing from this competition in order to enable Bakshi Bashir Ahmed to obtain this contract. I have already referred to Documents 2, 3 and 4 which appear to suggest, that on the one hand the IOC officials were eager to secure the services of the State Government for undertaking this transport and on the other, some degree of willingness on the part of the Transport Department to undertake it themselves. Ultimately, however, as seen already, they refused to have anything to do with it. The suggestion by the Government was that this later attitude was adopted by the State Transport officials at the instance of the respondent, in order to leave the field clear for Bakshi Bashir Ahmed and in this connection reference has been made in some of the affidavits to express directions by the respondent. As this, however, stands merely on the statements in the affidavits of persons not called as witnesses I am ignoring them. After denying these statements, the explanation which the respondent offers is that the undertaking of the transport contract would be a new venture so far as the Transport Department was concerned and involved a matter of policy which would have to be decided by the Government. This explanation, however, would not be adequate, because though a Cabinet decision might have been required in order to undertake a new line of activity, none would have been needed to decide not to undertake it. I am not basing myself, therefore, on this answer afforded by the respondent. Whatever be the strength of the circumstantial material for the suggestion that the State Government was at one time interested in undertaking this job, there is nothing to indicate in the files any material to justify an inference that the respondent was responsible for this change of attitude. No doubt, this change might have been in the interest of Bakshi Bashir Ahmed, but merely on that ground there is no question of my holding that the respondent had intervened and had directed the officers not to go ahead with the proposal which they originally contemplated. This is so far as the merits are concerned, but there is another and a more fundamental difficulty in the way of the Government, in regard to this part of their statement of the case and that is, that a charge of this nature is not envisaged in the allegation as notified and I have been directed by the Notification to confine myself to the allegations set out in it. The only competitor stated to have been eliminated, by reason of the abuse of power on the part of the respondent in the matter of obtaining this contract with the IOC, was the Poonch

Kashmir Transport Co, Ltd. Mr. Khambata, learned counsel for the Government, however, argued that the case of Poonch Kashmir Transport Co. Ltd. was referred to in the notification merely as illustrative and was not meant to be exhaustive, I do not read the notification that way nor can I in fairness to the respondent do that. On the ground, therefore, that the withdrawal of the State from undertaking this job of transporting the IOC products from Pathankot to Srinagar etc. is not within the terms of the notification, I am putting it aside.

1452 That leaves for consideration the only question which arises on this allegation as notified, namely whether the New Bharat Transporters, a concern of Bakshi Bashir Ahmad obtained this contract from the IOC through abuse or exploitation of the official position of the respondent by eliminating the Poonch Kashmir Transport Co. Ltd. which had quoted lower rates. That the rates offered by the New Bharat Transporters were higher than that offered by the Poonch Kashmir Transport Co. Ltd. cannot be disputed. That Poonch Kashmir Transport Co. Ltd. did offer the more favourable terms but on condition that the I. O. C. should secure for them the necessary route permits for running their tankers. The I. O. C. was unable to accept that offer obviously because they could not guarantee them the necessary route permits.

1453 The crucial part of the case, therefore, is, were the route permits obtained by the New Bharat Transporters through abuse or exploitation of the position of the respondent? on this matter there is a direct contradiction between the case of the Government on the one hand and that of the respondent on the other. It is the case of the Government that the respondent sent for Mr. S. K. Raina the Transport Commissioner and ordered him to issue these permits and this is what is stated by Mr. Raina himself in his affidavit. But since Mr. Raina has not been called as a witness, I indicated to Government that I would not act on his statement. The alternative submission of the learned counsel for the Government was that documents which they had placed before the Commission (Documents 9 to 18) clearly established that the grant of route permits was directly controlled by the respondent himself and that whereas those whom he favoured could obtain these permits for the asking, others were either refused these permits or that in any event there was considerable delay in the disposal of the applications. It was submitted that this was a regular feature of these entire administration of the Transport Department in the matter of the grant of route permits. The case of the respondent on the other hand was that no doubt applications for the grant of permits were in several cases addressed to him personally either as the Prime Minister or to him by name, but in all cases he marked them to the Transport Commissioner who dealt with them in accordance with the law and the provisions of the Motor vehicles Act.

Bakshi Bashir Ahmed in his reply states that he never approached his father, that he merely made an application which was granted and that he knows nothing more about it. This reply may be ignored as it will be sufficient to deal with the defence offered by the respondent. The statement by the respondent that he marked every application received by him to the Transport Commissioner is not justified by the documents which have already been referred to and, therefore, need not be repeated. In several cases he has passed orders, directing the grant of permits, and, therefore, his defence that the circumstance that under the Motor Vehicles Act the power to grant or refuse a permit was vested only in the Transport Commissioner does not carry him any far. I have already referred in dealing with Documents 10 to 15 to the manner in which the provisions of the Motor Vehicles Act were applied in the State in the matter of the grant of stage carriage, public and private carrier permits. Documents 9 and 16 indicate that the Transport Commissioner awaited orders of the respondent before exercising his power which according to the statute was vested solely in himself. Document 17 proceeds to state that the Government of India should address the respondent if the permits had to be obtained—obviously because without his order the permits would not be issued. All these negative the claim of the respondent that he did nothing more than mark the applications received by him to the Transport Commissioner for disposal according to law.

14.54 But this, however, does not exhaust the inquiry. The Government have to prove to establish the charge not merely that the respondent generally interfered in the matter of the grant of permits, but that he did so in the instant case and it is the consideration of this aspect that has given me the greatest difficulty. Of course, there is no direct evidence by way of notings in the files etc. which would indicate that the respondent had directed the grant of these permits, but it is the cumulative effect of several pieces of evidence which has satisfied me that the case of the Government in respect of this should be accepted.

14.55 We start with the manner and under the circumstances in which Bashir Ahmed obtained the tankers from Government which I have discussed earlier and found proved. The timing as regards the obtaining of these tankers and the search by the IOC for a contractor for transporting their products cannot be ignored. Though a quotation had been received from Poonch Kashmir Transport Co. Ltd. as early as the first week of July 1962, and though the rates quoted by them compared favourably with those quoted by the Transport Department in Document 2 dated 6th June, 1962, the IOC had not been able to proceed further with it, obviously because there was a snag in the matter of obtaining the route permits by the Poonch Kashmir Transport Co. The correspondence between the IOC and the Government continued till September 1962 and then we have a

break till March, 1963. It is evident that it was during this period that the I. O. C. were trying to fix up Bakshi Bashir Ahmed or a concern run by him for undertaking their contract. Now, Bakshi Bashir Ahmed had no tankers but tankers were being built on truck chassis for the Government in September, 1962. Immediately after 3 of them were delivered, we have in Document 10 in Allegation 26 a report by the Parts Manager dated 9th January, 1963 suggesting the exchange of truck chassis to be delivered by the Government in exchange for passenger chassis to be got from Fairdeal Motors. On 14th January, 1963 we have two tankers delivered to him in exchange and one more on 4th February, 1963. That is the subject-matter of Allegation 26 already dealt with. Immediately thereafter we find on 15th March, 1963 Document 23 in this allegation which is from the Branch Manager of the I. O. C. to Nav Bharat Transporters asking them to quote rates for their transport. From the dates of Documents 23 and 24—both dated 15-3-63—it is evident that the matter had already been discussed and agreed to and was being put merely in the form of formal correspondence and finally the agreement is entered into to be effective from 1st April, 1963. The details of the documents have already been referred to. The obtaining of the tankers and the entering into the contract with the I. O. C. were, I consider, really part and parcel of a single transaction so far as Bakshi Bashir Ahmed was concerned. It is in this context that one has to view the opinion expressed by the officials of the I. O. C., namely that the State Government controlled the route permits, the inference being that they had to approach some person who would have sufficient influence with the respondent to obtain these permits. Bakshi Bashir Ahmed had not previously been in the oil transport line at all but yet he says that the I. O. C. officials approached him as the best man who could undertake that job and that he accepted it though he narrates a fanciful story of his being pressurised by Abdul Rehman which I reject as a tissue of lies. He admits that he ultimately undertook the job and the manner in which he obtained his route permits justifies the opinion expressed by the I. O. C. officials as regards these route permits being available only to those favoured by the State Government which in the context meant the respondent.

14.56 The manner in which the applications of the Cooperative Federation which are included in Document 9 were dealt with where the necessity for respondent's orders is emphasised, compared with the speed with which the applications of New Bharat Transporters are granted within 24 hours (Document 30), an additional permit to them granted on the same day as the application (Document 31), to mention only some of those which Bakshi Bashir Ahmed obtained, are too striking to have come about in the normal course. There might be no direct documentary evidence of the Transport Commissioner having been directed by the respondent to grant these permits, but even if there was no verbal directions apparently it was understood that any application of Bakshi Bashir Ahmed for

route permits should be granted and granted immediately with the least possible delay. On no other footing can this feature be explained.

14.57 These circumstances constitute in my opinion irrefutable material leading to the conclusion that the charge as formulated in Allegation 27 is established beyond reasonable doubt.

14.58 I shall now proceed to ascertain the financial advantages obtained by the New Bharat Transporters belonging to Bakshi Bashir Ahmed by this abuse of power. This contract was executed on 20th June, 1963 (Document 23) but it was to come into force as stated in it from the 1st April, 1963. Under clause 26 of this agreement it was to be binding on the contractor for a period of five years with, however, a right reserved to the Company to terminate it at any time after giving four months' notice in writing. The respondent resigned his office of Prime Minister in October, 1963 and soon thereafter the Company finding that they could obtain other transporters to do their job at rates more favourable to them, terminated the agency of the New Bharat Transporters by notice and this transport contract was terminated from March 1964. It was, therefore, in force for a period of just a year.

14.59 All the books of account of the New Bharat Transporters are not available and only one of these account books covering the period 1st July, 1963 to 30th September, 1963 which the Government have been able to seize, has been produced before the Commission. The New Bharat Transporters have not produced the other books of account. As seen from the book before the Commission, it is found that for this period of this period of three months the total gross income derived by running eight tankers was Rs. 84,514.29 and the books show an expenditure on these vehicles of Rs. 17,526.35 yielding a net profit of Rs. 66,987.94 for the three months' period. It is true that Allegation 26 refers to three tankers got from Government though in fact Bashir Ahmed got four, but as Allegation 27 is not confined to the use of the tankers obtained from Government, but is concerned with the profits made from the contract with the I. O. C. by the obtaining of the route permits, I am taking the entire amount disclosed by the account into account.

14.60 Since the books relating to the other period have not been made available by Bashir Ahmed, I can only proceed on the basis that for the other nine months the profits were on the same scale. Proceeding on this footing, the total net income earned by the New Bharat Transporters by this contract and which is the improper advantage derived by this concern of Bakshi Bashir Ahmed, by abuse of power on the part of the respondent was Rs. 2,67,951.76 for the year in which they had the benefit of this contract.

15.1 With the charge contained in Allegation 27 we complete those in relation to what might be termed the Transport group. The next group of allegations in which the respondent is charged with having conferred undue favours on his son Bakshi Bashir Ahmed by abusing his official position, falls into three categories. The first is concerned with Bakshi Bashir Ahmed's purchase of two properties in Pahalgam—one from Ahmed Sohra at the end of 1958 (which is the subject-matter of Allegation 4 already dealt with) and the other from one Kanwar Reshi Singh in 1958. In relation to these properties the respondent is alleged to have either directed or connived at an encroachment on contiguous lands abusing his official position. The charge in relation to the encroachments in regard to the properties purchased from Ahmed Shora is contained in Allegation 5 while Allegation 6 relates to the encroachments stated to have been made on the property purchased from Kanwar Reshi Singh and these two I shall proceed to consider.

15.2. Allegation 5 as notified reads —

“The area of land purchased under allegation 4 was enlarged by encroachment on 4 kanals and 17 marlas of Shamlat land, in the possession of the vendor, and 12 kanals and 10 marlas of Forest land, comprising a total area of 17 kanals and 7 marlas. This encroachment was with the knowledge, consent and connivance of Bakshi Ghulam Mohammad. The house constructed on the said land, including the land encroached upon was later sold to the Northern Railway as the property of Bakshi Bashir Ahmed, the son and Bakshi Abdul Majid and Ghulam Nabi, the brothers of Bakshi Ghulam Mohammad.”

and is connected with allegation 4, but only in this sense that to the property purchased in Allegation 4, these encroachments are said to have been made. In respect of this allegation notices under Rule 6(1) (a) have been served on the 3 vendees named as well as to the respondent and replies have been filed by all of them —Majid's alone dealing with the merits of the allegation *viz.* the factum of the encroachment, the others merely adopting them.

15.3. As would be seen from the discussion of the matters connected with Allegation 4 pp. 106 to 113 ante, the extent of property purchased in July 1950 under the two deeds (vide Documents 5 and 6 in Allegation 4) was 14 kanals 3 marlas. There was apparently some small structure on the property at the time of the purchase; but after the purchase extensive improvements were made and a house was constructed or reconstructed. I have already pointed out that Abdul Majid in his voluntary disclosure to the Income-Tax Officer filed in February, 1956 states that he had expended Rs. 70,000 on this property. The house with the compound was sold to the Northern Railway Administration under a deed dated 23rd March, 1961 (Document 23) in which the extent of the property conveyed is shown as 31 kanals 10 marlas. It is the difference between these two extents that is stated to be the area encroached. According to the case of the Government, the area encroached is made

up of two distinct items (1) 4 kanals 17 marlas of Shamlat Deh Land belonging to the vendor Ahmed Shora, (2) 12 kanals 10 marlas of demarcated Forest Land belonging to the Government. The gravamen of the charge is that these encroachments were made with the knowledge, consent and connivance of the respondent.

15.4. The questions arising on this charge are naturally two and they are distinct : (1) Was there an encroachment as alleged; and (2) was this with the knowledge, consent and connivance of the respondent. These may be taken up for consideration in that order.

15.5. First, whether there was an encroachment. As seen from what had been stated earlier the total extent said to be an encroachment is made up of two separate items : (1) Shamlat Land belonging to Ahmed Shora; and (2) Forest Land being the property of Government and these have to be considered separately.

15.6. The position as regards the Shamlat Land was this. The property conveyed by Ahmed Shora under the two sale deeds of July 1950 was of an extent of 14 kanals 3 marlas made up of Khasra numbers :

		K. M.
No. 14	..	6.14
No. 14/1	..	0.13
No. 15	..	5.4
Part of No. 28	..	1.12
		K 14.3

While khasra Nos. 14, 14/1 and 15 were the proprietary lands of the vendor, khasra 28 was Shamlat Deh of a total extent of 6 kanals 9 marlas out of which only 1 kanal 12 marlas was conveyed, the balance of 4 kanals 17 marlas continuing as the property of Ahmed Shora. While it is the case of the Government that the remaining Shamlat Land of Ahmed Shora was encroached upon by the vendees, the contention of Abdul Majid who has set out his defence on the factum of encroachment is that there was no encroachment at all, but that by virtue of their purchase of the 14 kanals odd of proprietary land, they became entitled in law to the entirety of the Shamlat Land of which they took possession with the consent of Ahmed Shora simultaneously with their taking possession of the 14 kanals purchased by them and that this fact of this possession is reflected in the entries in the revenue registers maintained by public officials.

15.7. On this defence the first matter to be considered is—Does the title to the entire Shamlat land in the possession of a proprietor pass to a purchaser automatically on his purchasing the proprietary land of the vendor? Nothing is indicated by Abdul Majid as to the basis for this statement of the legal position, besides the absence of any evidence

to establish that the proprietor-vendor possessed no other property in the village in proprietary right. On the other hand there is evidence that Ahmed Shora had other land in proprietary right in the village. We have for instance the recital at the commencement of the Sale Deed (Document 5) in Allegation 4 which states that the vendor was the proprietor of 27 kanals 1 marla of cultivated land out of which he parted with only 12 kanals 11 marlas under the 2 deeds. This apart, the proposition of law here put forward is directly contrary to the terms of the sale under which only 1 kanal 12 marlas of Shamlat Land in Field No. 28 was being conveyed. There is besides the circumstance, that in Khasra 28, Shamlat Deh of 6 kanals 9 marlas was purchased along with certain properties by Ahmed Shora only in 2002 (1945) and khasra 14 and 15 were not the subject of purchase then. So to say that the entire Shamlat Deh was as it were an appurtenance or accessory to the proprietary land khasras 14 and 15 is to say the least baseless.

15.8. We have next to consider whether the story that possession of the other part of the Shamlat land was taken at the time of the sale in 1950 is borne out by the Revenue records. The sale by Shora was, in Har 2007 and we have khasra Girdawari of the Mamal village for the years, inter alia, 2000-2009 (Document 1) in which there is a note in the year 2007 regarding the transfer only of 1 kanal 12 marlas of Field 28-Part to Bakshi Abdul Majid and others and it would appear from this Register that possession of the rest remained with Ahmed Shora until 2009 (1952). The khasra Girdawari of the next year 2010 (Document 6) records that Ahmed Shora was the owner in possession of Field No. 28—Shamlat Deh of an extent of 4 kanals 17 marlas. It is only in Smt. 2011 (1954) that we find the names of the vendees shown as being in possession of the whole field. It was pointed out that it was then that the respondent became the Prime Minister of the State. This may be contrasted with the entry regarding Field No. 14 in regard to which the vendees are shown to be in possession even earlier right from the date of the sale deed—viz. 2007. The Girdawari for the later years (Document 7) follows Document 6 and shows the vendees as in possession of the entire extent. The mutation record is Document 9 and in it serial No. 181 relates to Field No. 28—the Shamlat Deh. It records the vendees as the persons in possession and in it there is a note dated 15th December, 1960 by the Tehsildar Pahalgam in which after setting out the registered sale deed of July 1950 he directs inter alia the entry in the record that the vendees were in possession of the entirety of the land covered by Field 28 (i.e. including the 4 kanal 17 marlas not in the sale deed) as from the date of the sale.

15.9. Mr. Khambata submitted that this mutation in December 1960 must have been made, having regard to its date, just to perfect their paper title to the Shamlat land encroached on some time in 1954 and should, therefore, be treated as part of the tactics employed with the connivance of the respondent to legalise the trespass. His contention was that the dispossession of Ahmed Shora from the Shamlat Deh could have been only in 2011 (1954-55 vide Document 6) and that the trespass then effected was sought to be shown as possession in lawful right in 1960, through the abuse of the official position of the respondent. I feel unable to accept this argument. In the first place we have the fact that Ahmed

Shora has not protested against the so-called encroachment or trespass, right up to the commencement of these proceedings, though the property had been sold to the Northern Railway and passed to their possession from March 1961. This, however, might not be conclusive, but we have the record of the mutation proceedings in December, 1960 as a result of which Mutation entry 181 referred to earlier came to be recorded. Under the relevant provisions of the Land laws it was not denied that there could be no mutation without notice to the persons affected—in this case the vendor. I must presume in favour of the regularity of official acts and so must in the absence of proof to the contrary, hold that this mutation had been effected after notice to the vendor. If it were so, subject to any proceedings which the vendor might commence to undo the mutation, I must proceed on the basis that the mutation was validly effected and that the recitals on which the mutation rests are true. In the circumstances I must hold that it has not been established that the vendees encroached on the Shamlat Land of Ahmed Shora without his consent, or that he or those claiming from him are now in illegal occupation.

15.10. What requires to be considered next is whether the vendees had trespassed upon and encroached on Forest Land of an extent of 12 kanals 10 marlas, the case as regards which stands on an entirely different footing. That land which was extra to that which had been bought from Shora had been sold to the Northern Railway as the property of the vendor cannot be disputed having regard to the measurements and extents set out in the sale deed (Document 23) though there is a suggestion in the reply of Abdul Majid, that this was included in the sale deed by mistake, a matter which I shall examine later. That this extent of land is clearly within the fences and boundaries erected as the compound for building is admitted. Therefore, it was a clear case of encroachment. The question next to be considered is as regards the manner in which title to this bit of land was sought to be made out, which the Northern Railway authorities accepted.

15. 11. Before doing so, however, it is convenient to deal with and put aside a frivolous argument raised in the reply of Abdul Majid that this extent had not been proved to be Forest Land. Forest Land, it is stated, could either be "demarcated Forest Land" or "undemarcated Forest Land". A demarcated forest should have pillars or boundary stones to identify the plot, and it is stated there are no such boundary marks. Other points are raised in defence, in the event of its being "undemarcated forest land", but in view of the evidence placed before me to establish that this was a "demarcated forest" land, I do not consider it necessary to deal with the contentions raised on foot of the area being "undemarcated forest". The Government have produced File 33 Forest Kashmir Division of Samv. 1978. Forest No. 11 in it is called "Chhilnar Mamal". The document recites that the demarcation took place after notice was issued to the adjoining owners and that boundary pillars were erected. The area now in controversy is between boundary pillars 13 and 17. A map or sketch has been filed which identifies these pillars and which clearly marks out the area of forest land encroached. The affidavit of Ghulam Rasool Khan D. F. O. Demarcation Anantnag Division in regard to the 12 kanals 10 marlas being "Demarcated Forest

Land" is fully borne out by the unimpeached official documents produced. In response to a request by Government that I might inspect the premises, I did so on the 1st October, 1966 and the respondent was present at Pahalgam and took me round the property. I found that the forest boundary pillars were at the spots shown in the sketch, and that the water tank of the house had been erected on forest land, i. e. beyond the boundary pillars. There is a fence enclosing the entire area which includes, of course, land beyond the boundary pillars. That the area included within the fence includes forest land and that the same has been encroached upon is, therefore, made out beyond any possibility of doubt.

15.12. Secondly, Abdul Majid states that the encroachment, if any, was by this vendor Ahmed Shora himself and that he occupied this contiguous land as the successor in title of Ahmed Shora. This submission also is wholly inconsistent with the terms of the sale deeds of July 2007 which specify the exact extent of land conveyed under each. It is impossible to imagine that if Shora had encroached contiguous forest land and was conveying it, he would not claim to convey that also and include its extent in the sale deeds. Particularly so when the extent covered by the deeds is 14 kanals 3 marlas and the extent now in controversy is nearly as much *viz.* 12 kanals 10 marlas. The suggestion is puerile and mentioned for the first time here (that was not the case in the correspondence which preceded the sale to the Northern Railway) and being inconsistent with the other documents on the matter, may be rejected out of hand.

15.13. Majid's and his co-vendors' title to this forest land which formed the foundation of their right to convey it to the Railway, was really grounded on a certificate issued by the Deputy Commissioner Anantnag, one Mr. Malik A. Khaliq on 20th December, 1960 marked as Document 10. As considerable importance has been attached to this certificate by the Government, it is necessary to detail its terms. It starts by stating that the 12 kanals 10 marlas of land "adjacent to and annexed with the Residential quarters" was forest land. It goes on to say that Majid, Nabi and Bashir Ahmed described as "transferees" had been in possession of the area from before 2010". This is significant in two respects—(a) It does not say that their vendor was in possession and had conveyed to them this property thus negating one of the defences raised by Abdul Majid. (b) It does not specify the precise time from when, after the conveyance in their favour, the "transferees" came to be in possession. It then proceeds to make a reference to the entries in the Shajra and Khasra which are stated to be enclosed. The reference to these revenue records has some importance as will be seen presently.

15.14. The question next to be answered was how the "transferees" though they got into possession at some point of time after their purchase acquired title thereto. This was explained in Document 10 as being based on their right as occupancy tenants under Cabinet Order No. 397-C of 1951 by which "no ejectment of such occupants of forest land" could be made, such occupants being considered as "occupancy tenants and proprietors as well".

15.15. It will be convenient to take up the two parts of this memorandum separately. First, as regards the entries standing in the name of the transferees "according to the copy of the Shajra and Khasra". The Khasra in relation to this property has been placed before me and the relevant entries in it have been marked as document No. 8. In the Khasra Girdawari of 1957 to 1964 A.D. at page 39 is an entry which reads in translating as follows :—

"Janglat (forests) in possession of Bakshi Abdul Majid and Bakshi Ghulam Nabi, sons of Bakshi Abdul Gafar and Bakshi Bashir Ahmed son of Bakshi Ghulam Mohd. in equal shares, residents of Srinagar, Nawakadal".

The extent in their possession is stated to be an area of 12 kanals 10 marlas and the field No. in relation to this property is specified as Field No. 1. It is stated by Mr. Ghulam Ahmed who claims to have been employed as Patwari in the Revenue Department in the year 2007, that in December 1960 he made the entry just now referred to, at the instance of the Deputy Commissioner who was acting under the directions of the respondent and that the entry was made in order to make out a title in regard to this area of forest land on which the water tank pertaining to the residential building had been constructed. As this deponent has not been called for oral examination, I am not accepting it. It, therefore, becomes necessary to consider first, whether this entry was inserted in 1960 not having formed part of the original register as compiled in 1957. Corroboration is afforded to the statement that this entry was inserted long after the original book was written up by several circumstances. There is a Field No. 1 at the beginning of this register and the property covered by it is shown to belong to Salam s/o Khizar a very different person, which would show that Field No. 1 also assigned to this item of property is a fictitious number. The second circumstance is that this entry is seen in the register to be interpolated in the margin and is not in the place where regular entries are found. Then, we have the circumstance that the interpolation at the margin is in a very different ink from that used to write the entries on the main pages of this register and particularly page 39 which would be another indication that the entry in the margin not written at the same time as the body of this page. And next, on page 39 where this entry is found to be interpolated, the total extent of land in the whole village is set out, classified according to the several types of land—vegetable growing land, hilly-cum-plain, plain, marshy land. The extent of each classified as above is totalled and is given as 521 kanals and 8 marlas. A scrutiny of the figures shows that the extent of 12 kanals 10 marlas of forest land is not included in this total, which shows that this entry regarding the forest land was inserted long after the totals were made up and entered. Nor is there any reference to the class of forest land as among the various types of land in the village. In view of these features I am satisfied that this entry in the Khasra in the Girdawari of 1957 is an interpolation which came into the document only much later. If the evidence afforded by the statements in the affidavit of Ghulam Mohammad Bhat, the patwari be discarded as it must be—for the reason that he has not been called as a witness, the precise point of time when the interpolation was made is not established, but the

submission of learned counsel for the Government that in view of the entry in the khasra being referred to in the certificate of the Deputy Commissioner (Document 10) as if it was one of the basis of his order, the entry must have come into existence at or about the time of the issue of the certificate viz. December, 1960, appears to be eminently reasonable and justified and I accept it.

15.16. As the entry has, it is apparent, been made in order to enable the Deputy Commissioner to issue the certificate on 20th December, 1960 I consider it an inescapable conclusion that the interpolation has come into existence only at the instance of the Deputy Commissioner himself in order to facilitate the vendors making a title to this forest land also, on which certain constructions particularly the water tank—which they proposed to include in their sale stood. This is so far as the entries in the Khasra are concerned.

15.17. Turning next to the Cabinet order (Document 12) to which reference is made in the certificate of the Deputy Commissioner, it would be useful to set it out in full (the Cabinet order) to show how groundless this was as a source of title. It is a Cabinet order which is authenticated by the signature of the previous Prime Minister Sheikh Mohammad Abdullah and it reads :

“In order to resolve the controversy arising out of liability to ejectment of cultivators who were allotted lands under Grow More Food Scheme since 2005, it is hereby ordered that :—

- (a) no ejectment should be effected in respect of cultivators of Forest lands who were allotted lands with the joint approval of Forest and Revenue or Grow More Food Officers,
- (b) no ejectment of persons who are cultivating Forest lands without proper allotment or authority shall take place except with the joint approval of Forest and Revenue Ministries, and
- (c) no allotment of land shall in future be made for cultivation except with the joint approval of Forest and Revenue Ministries.”

Its preamble shows that it applies only to those who were allotted land under the Grow More Food Scheme. It was not pretended that these lands were allotted to the “transferees” under the said scheme.

15.18. Besides to obtain the protection of paragraph (a) the allotment must have been made with the joint approval of the Forest, Revenue or Grow More Food officers and under paragraph (b) in cases where the allotment was not proper no ejectment was to be made of persons who were cultivating the Forest land. Except that the forest land was enclosed with the fence, there was no suggestion of this extent even having been cultivated. It is obvious that this Cabinet order was wholly irrelevant and was referred to by the Deputy Commissioner with a brazenness rarely to be seen because I cannot that imagine a revenue official

of his position was not familiar with the terms of the Cabinet order the number of which he cited in his certificate. It would therefore, be seen that the certificate of the Deputy Commissioner (Document No. 10) with its reference to an irrelevant Cabinet order and the interpolated girdawari has been prepared merely with a view to afford the vendors title to the property from 1957 onwards. The case of the Government, therefore, that the vendors deliberately encroached upon Forest land to which they had absolutely no title is clearly made out, as also that they sought to lay title to it by fraudulent entries in revenue register.

15.19. Before proceeding to consider whether the charge as specified against the respondent is made out or not, it is necessary to consider a half-hearted defence raised by Aboul Majid which is adopted by his co-vendors, that he did not intend to sell the Forest land and had made it clear to the Northern Railway that he was not the owner of the forest land. I consider that this defence, which is without substance, far from helping Abdul Majid, affords if anything further proof that the entries in the girdawari were interpolated after the negotiations for the sale of the property began, and that the certificate with its deliberately false recitals was obtained in order to make out a title which he knew very well he did not have. The negotiations for the purchase of this property started after the Railway Board received a note from an officer of theirs, one Mr. Gandotra in April, 1960 (Document 13). Originally there was some correspondence between Mr. Iqbal Singh, Chief Engineer, Northern Railway and Mr. P. N. Wanchoo, Chief Engineer, P.W.D., Kashmir as regards the availability of this building and the price at which it could be obtained (Document 14). The first time, however, that Abdul Majid appears on the scene is in October, 1960 when on the 15th of that month he wrote a letter (vide Document 18) to the Chief Engineer, Northern Railway regarding the price which he would demand for the sale of that house. In the course of that letter he stated, and it is this that is relied on in this context: "The area of land with the house is about 25 kanals, out of which 6 kanals are under my proprietary ownership and about 9 kanals of land are Navtur for which lease in my favour will be transferred to the Northern Railway. The price of 16 kanals is payable to me and annual lease money for about 9 kanals will be payable to the State Government. In the break-up which he gave regarding the value of the property he demanded a price of Rs. 1,500/- per kanal for the 16 kanals of land making a total of Rs. 24,000/-. Before passing on from this letter three matters require to be stated: (1) The statement that Abdul Majid and his co-owners held a lease from the Government of 9 kanals of land or for that matter any extent of land in the compound of the property for the sale of which he was negotiating, was a deliberate lie—and even in his reply he does not attempt to justify it. (2) This reference to the land as that belonging to the Government shows that he was aware that even in October, 1960, he had not obtained proprietary title to it. This would besides point to the interpolation in the Girdawari which showed the forest land as the property of Abdul Majid and his co-owners having coming into existence not in 1957, but only after October, 1960—which is confirmed by reference to the contents of Document 19 to which I shall refer immediately. (3) The fact that a claim is made to proprietary right only to 16 kanals, might indicate that even in regard to the Shamlat Deh,

belonging to Ahmed Shora, Abdul Majid did not consider himself as the owner till the mutation in December, 1960. Possibly the trespass and encroachment on this land was gradual and the entire area was occupied and reduced to possession only in December, 1960.

15.20. The negotiations proceeded further and we have a letter from Abdul Majid dated 23rd December, 1960 (Document 19) addressed to the Chief Engineer in which he says—

“Here it may not be out of place to mention that after proper verification of records and title deeds etc. it has come to light that a much larger plot of land stands in our name than was originally stated in our communication dated 15th October, 1960 to your administration, in support of which copies of the Deputy Commissioner Anantnag’s certificates dated 20th December 1960 issued in this behalf, are enclosed.” (underlining mine).

And with this letter the certificates (Documents 10 and 11) referred to earlier were enclosed. Pausing here, some comment on these two letters appears called for. In the first place, the reference to Government land in the earlier letter is clear proof of the encroachment being conscious, and on Government land. Besides the fact that the extent of Government land was given as 9 kanals, whereas the actual area encroached on was 12 kanals 10 marlas indicates that the vendors had merely fenced their property taking it to the boundary they chose, without even caring to ascertain the exact area of forest land they encroached upon. The sketch which is annexed to the sale deed to the Northern Railway, which is a copy of the Shajra referred to in the Deputy Commissioner’s certificate, shows that Field No. 1 is a separate block to the west of the “proprietary” land and has been consciously and deliberately encroached upon.

15-21. The next document to which Bakshi Abdul Majid was a party is a special power of attorney which he executed in favour of Bakshi Bashir Ahmed to execute the sale deed and receive the consideration therefor. In this it is recited that what was being conveyed under the deed which Bakshi Bashir Ahmed was to execute 31 kanals 10 marlas of land along with the constructions, bungalows, out-houses etc. built thereupon under Survey Nos. 15.14,41/1, 28 and 1 in Pahalgam (Mamal) Tehsil Anantnag, Kashmir. In the deed which is executed by Bakshi Bashir Ahmed, as the agent under power of attorney, the land conveyed is described as of an extent of 31 kanals and 10 marlas as per a plan annexed thereto of which “12 kanals and 10 marlas were Forest land” title to which was “conferred upon the sellers by virtue of J&K Cabinet order 397-C of 1951 as certified by the Deputy Commissioner Anantnag in his letter dated 20-12-60 attached as annexure “B” and 19 kanals situated in village Mamal and under khasra 15 and 28 mutation No. 181 and khasra Nos. 14 and 14/1 mutation 182 as per Deputy Commissioner’s letter dated 20-12-1960 attached as annexure “C”. In the face of this correspondence and these documents it is impossible to consider seriously the defence that Bakshi Abdul Majid did not intend to convey the Forest land belonging to the Government. The fact was that in his letter dated 15-10-60 (Document 18) he had stated that 9 kanals was property

held on lease from the Government, (which itself was false) but this was before interpolations had been made in the Khasra Girdawari of village Mamal by which the Forest land of 12 kanals 10 marlas was shown as being in the occupation of himself, as also before the Deputy Commissioner had been persuaded to issue the certificate (Document 10) affirming his title as owner of this property by virtue of a Cabinet resolution which as I have stated earlier was wholly irrelevant. When one Abdul Majid found that his title was correct on paper he went through the transaction purporting to convey the larger extent of 31 kanals 10 marlas and it is in this context that one has to understand the reference to this extra extent in Document 19, Majid's letter dated 23rd December, 1960. There is here no reference to the lease, but what we have is an assertion of title which was persisted in the power of attorney and which he does not say he had not read and in the sale deed executed by Bakshi Bashir Ahmed. The only redeeming feature is that the price of Rs. 24,000/- fixed for the land was not increased but that is wholly irrelevant for determining whether Abdul Majid and his co-vendors asserted title to the Government land and purported to convey what they must have known did not belong to them being merely an encroachment on public property. Possibly they had fixed a round figure of Rs. 1½ lakhs as the price of the property and this was the break-up of that figure.

15.22. The last of the questions that remains to be considered is whether the statement in the Allegation that the encroachments were made by abuse of the official position of the respondent as Prime Minister and by the exploitation of that position by his relatives with his connivance is made out. It is needless to say that this portion of the charge is vehemently repudiated by the respondent as well as by Bakshi Abdul Majid, Bakshi Ghulam Nabi and Bakshi Bashir Ahmed. The case of the Government as set out in their statement of the case and the affidavits in support is that the respondent had in 1958 issued directions to Mohammad Yasin Farooqi, Range Officer, Liddar Range, to have the encroached area enclosed in accordance with the alignment given by himself with the cost of the fencing being debited to the Beautification Scheme. The respondent has denied this statement asserting that he had no knowledge of the alleged encroachment and that he did not give any directions for the alignment. He also adds that the Range Officer and the Forester may have put up the fence in pursuance of the Beautification Scheme sponsored by the Government as a routine matter and because of that circumstance the expenses must and should have been debited to the said Scheme. He also denied that the Deputy Commissioner had been required by him to issue a certificate for the property which must have been issued "in due course". Though the facts stated by the Government as regards the express directions given by the respondent to mark the boundary and erect fences at the spots where they are now, are supported by affidavits filed by the Revenue Officers who are referred to in the statement of the case, they have not let in any oral evidence to substantiate that part of the case and hence I am rejecting their statements as not being proper material.

15.23. The point nevertheless has to be considered whether from the proved facts, the inference necessarily follows that the respondent (a) knew of the encroachment; and (b) acquiesced in it and had the

boundaries fixed in the manner in which they have been done. Before considering it, the fact that the respondent had often been to the premises and residing in it during some summers does not seem to be in dispute. In this connection, reference has to be made to certain entries in the diaries of Abdul Ghani Bhat contractor who appears to have effected certain additions to the building in 1958. In his diary No. 374 he records on 4th September, 1958—

“(Amount received) from Bakshi Ghulam Mohd. in part payment of the bill for repairs in Pahalgam kitchen—Rs. 850 receipt given.”

“on 25th October, 1958—

“(Amount received) from Bakshi Ghulam Mohd. on account of balance payment of two rooms of Pahalgam—Rs. 950”.

There are several more entries like this to establish his presence in the Pahalgam house at this time and also in 1959. Coming to 1960, there is an entry in diary No. 380 against the date 15th May, 1960—

“Miscellaneous (expenses) on Prime Minister at Pahalgam—Rs. 60”.

Similarly on 7th June, 1960—

“Miscellaneous (expenses) Prime Minister—Rs. 150.

and on 16th June, 1960—

“Miscellaneous (expenses) Prime Minister at Pahalgam—Rs. 60”.

and so on.

15.24. The next question is whether he was aware of the encroachment. We have the circumstance that though the property stood jointly in the names of his two brothers Abdul Majid, Ghulam Nabi and his son Bashir Ahmed, the entire consideration for the sale was received by his son. In the sale deeds under which the property was purchased, Bakshi Bashir Ahmed who was then a minor is shown as being under the guardianship of Abdul Majid—his paternal uncle. The reason why he was so shown is not explained in the reply filed by the respondent or his brother. If, however, as seems certain, Bakshi Bashir Ahmed was under the guardianship of his father Bakshi Ghulam Mohd. it stands to reason that the latter should have been aware of the transaction of purchase and also aware of the extent of the land purchased from Ahmed Shora.

15.25. Next as regards the sale of the property we have the circumstance that when Mr. Gandotra, an officer of the Northern Railway was deputed to find out a suitable place at Pahalgam for a Holiday Home for Railway employees he met the respondent more than twice

in March 1960 and it was after these meetings that the Railways became interested in the purchase of the property standing in the name of Abdul Majid and others. The report of Mr. Gandotra as to his conversation with the respondent is to be found in Document 13 and though in terms he does not say in this that the respondent suggested the purchase of this property, this is clear from the affidavit of Mr. Gandotra which he has filed in the present proceedings. I am prepared to accept the statement of Mr. Gandotra that the respondent suggested to him that this property might be purchased and suggesting that he might discuss it with Abdul Majid as regards the terms and the price as a reasonable deduction flowing from his contemporaneous communications. Subsequently, Abdul Majid conducted the correspondence but only up to the point of reaching an agreement as regards the price. Immediately negotiations reached this stage, Bakshi Bashir Ahmed enters the scene and Bakshi Abdul Majid and Bakshi Ghulam Nabi executed a power of attorney in favour of Bakshi Bashir Ahmed on 22nd February, 1961 (Document 22) under which the agent was authorised to transfer their two-thirds share, to execute the necessary documents and to receive the consideration therefore. In pursuance of this power Bakshi Bashir Ahmed executed the deed of sale (Document 23) on the 23rd March, 1961 on behalf of himself and his principals and received the entire consideration of Rs. 1,50,000/- made up of Rs. 1,37,810/- for the property and Rs. 12,190/- being the value of the furniture for which a separate receipt signed by Bakshi Bashir Ahmed on behalf of himself and the two others (Document No. 24) was given. If really Bakshi Abdul Majid and Bakshi Ghulam Nabi had at the date of the sale any interest in the property one would have expected them to receive their share of the consideration or at least some portion thereof, but in fact it is shown by the documents which have been placed before the Commission that the entire consideration was received by Bakshi Bashir Ahmed and himself alone. For the sum of Rs. 1,50,000/- two cheques drawn on the State Bank of India were issued in favour of Bakshi Bashir Ahmed, one for Rs. 1,37,810/- and the other for Rs. 12,190. Both these cheques are shown to have been presented for realisation by the United Commercial Bank, Srinagar and were received by the said bank—one on the 24th and the other on 30th March, 1961. Both these cheques were paid by Bakshi Bashir Ahmed into the account of Fairdeal Motors, Srinagar and the amount realised—Rs. 1,50,000/- was credited to the account of the said firm (Document 25). These amounts are entered in the ledger of Fairdeal Motors for the year 1961 on page 177. Then at the end of the financial year—on 31-3-61—four cheques were drawn each for Rs. 25,000/- and cash was withdrawn on those cheques. Out of this cash Rs. 50,000/- was credited to the account of Bashir's wife Yasmin Bakshi (vide page 315 of the ledger) and Rs. 25,000/- each was credited to Anjum Ara and Afat Ara—daughters of his sister Shama Mir (vide page 316 and 317). Evidently the balance of Rs. 50,000/- was retained for the benefit of Bashir himself. It is thus clear that the entire amount of consideration belonged to and went into the accounts of Bashir Ahmed. In the statement of the case a reference has been made to the feature that the entire consideration was received by Bakshi Bashir Ahmed and Document 25 was among the documents relied in support thereof. Though the respondents and the others who have filed replies in support

of their case had inspection of document 25, they did not deny these facts and attempted no explanation of this circumstance.

15.26. It is in the context of these features that the conduct of the respondent in this transaction has to be judged. If Bashir was the full owner, it stands to reason that the consideration for the purchase of the property when it was acquired in 1950 must have come from the respondent. The object of bringing in his brothers who had apparently no interest in the property seems to be obscure, no explanation having been offered either by the respondent or by his brothers. Then we have the further circumstance that the minor son is described as being under the guardianship of the younger brother for which also there has been no explanation. The only reasonable inference that can be drawn from this circumstance appears to me to be that the respondent desired to avoid the public knowing that he had anything to do with the property or had an interest in it. But having regard to the real nature of this transaction it stands to reason that the respondent was perfectly aware of the purchase of the property, its extent and was instrumental in the purchase and as his son was the real vendor, he must have been aware of the sale as well, apart from the reference to the respondent in the correspondence between Mr. Gandotra and the Northern Railway authorities.

15.27. If he was instrumental in purchasing this property for his minor son and knew its extent it is not possible to conceive that he took no interest in it after the date of the purchase. That buildings were erected on the property purchased within a few years after the purchase seems to be clear on the admitted facts. As part of these buildings and as adjunct thereto a water tank seems to have been constructed on land which is now shown to be forest land. This might have been sometime in 1953 or 1954. It is possible that the fence around the property which included within its extent both the entirety of the Shamlat land as well as the 12 kanals 10 marlas of Forest Land came into existence much later. It would be proper to regard this erection of the fence as the real point of time when the encroachment was effected and perfected. In the affidavits filed in support of the Government case the Revenue officials have, as stated earlier, deposed that this fence which effected the encroachment was erected sometime in 1958 on the direction of the respondent which of course is denied by the respondent, and for that reason I discard. That the fence came into existence in 1958 is, however, not in controversy because the "Beautification Scheme" of which the fence is stated to have formed a part was put in 1958. It is admitted by the respondent that the fence was put in as part of that scheme, the expenses thereof being debited to the Government. It is beyond one's comprehension as to why in order to effect a beautification of this area, the officers were anxious to add 12 kanals 10 marlas of forest land to the property purchased from Ahmed Shora and including in it land over which the water tank had been erected. This admission rather suggests that this addition was made at the instance of the owners of the property, the boundary line being so drawn as to make it regular even if it meant including a considerable area of forest land. In the circumstances it appears to me highly probable that the only person who could have given such a direction is the respondent. There is another

possibility that under the arrangements which were come to between the members of the family towards the end of 1960, this property was allotted to Bashir Ahmed, but this makes no difference to the reasoning. I should, however, add that in view of the interest which the respondent took in the construction and was expending monies on it as seen from the entries in the diary of Abdul Ghani Bhat, that I consider it more probable that Bashir Ahmed was the real owner from the time of purchase.

15.28. Then there is the circumstance that the forest boundary pillars, which I saw on my local inspection, stare one in the face and the fence which encloses the vacant land round the house, plainly covers the forest land. As the respondent has been proved to have been in the property in 1958, 1959 and 1960, it follows that there could be no question of his not being aware of the encroachment on forest land.

15.29. Next we have the circumstance of the granting of the two certificates (Documents 10 and 11) by the Deputy Commissioner Anantnag. Earlier when dealing with Document No. 10 relating to the title to the forest land I had occasion to point out that the document gave reasons for making out the title which were patently false and were invented. This was preceded by the interpolation in the Khasra Girdawari which could have been effected only by some improper pressure from official quarters. This entry in the Khasra Girdawari was stated to be the basis, along with the irrelevant Cabinet order referred to, for establishing the title of Abdul Majid and his co-owners to the 12 kanals 10 marlas of Forest Land. The Deputy Commissioner is a fairly important and high official and that a person of his rank should have stooped to issue a certificate as Document 10 shows that pressure of no ordinary kind must have been exerted to get him to do it. It is noteworthy that Document No. 10 was treated as the foundation of the vendor's title to the property in the sale deed to the Northern Railway (Document 23) notwithstanding that just before the issue of the certificate Abdul Majid had himself admitted (in Document 18) that he had no proprietary interest in the Forest land and merely claimed to be in permissive possession thereof. One curious circumstance which is of more than ordinary significance attending the transaction of sale might be noticed here. The Deputy Commissioner who by his certificates (Documents 11 and 10) had, so to speak, established the title of Bakshi Abdul Majid and his co-vendors to the Shamlat as well as the Forest Land was an attester to the power of attorney executed by Bakshi Abdul Majid and his brother in favour of Bakshi Bashir Ahmed. He was also an attester to the deed of sale by Bakshi Bashir Ahmed in favour of the Northern Railway. What interest this official had in the sale transaction one fails to understand. This, in my opinion, is another strong circumstance to indicate that the driving force behind this official was the respondent.

15.30. In view of the above discussion I am satisfied that the respondent was at least aware of the encroachment, took an interest in the sale and was instrumental in establishing the title of the vendors to the encroachment which was also the subject of sale. I, therefore, hold that the charge contained in Allegation 5 is established beyond reasonable doubt.

15.31. It now remains to estimate the financial advantages gained by Bakshi Bashir Ahmed by this abuse of the official position on the part of the respondent. The total extent of land conveyed under the sale deed (Document 23) to the Northern Railway was 31 kanals 10 marlas. Out of this I have held that the encroachment proved to have been made was only of 12 kanals 10 marlas of forest land. In the sale deed the land is priced at Rs. 24,000/-, though I should point out that this figure occurs in the correspondence even before the total extent was finally fixed. The value of 12 kanals 10 marlas on the basis of Rs. 24,000 for 31 kanals 10 marlas works out to Rs. 9,500/- which is the financial advantage gained by Bashir Ahmed.

16.1. By five deeds of sale all dated 30th September, 1958 Bakshi Bashir Ahmed and his sister Shamim purchased 20 kanals and 17 marlas of land in Noonewan village in Pahalgam with some constructions on them for a total price of Rs. 25,000/-. According to the sketch filed by the Government which is marked Appendix B to the statement of the case, the area enclosed by the fencing round the property includes according to the Government besides this 20 kanals 17 marlas, 28 kanals 5 marlas of forest land and 4 kanals of land belonging to the neighbour one Banke Behari of Jammu

16.2. That the extent of the land within the fence as drawn in the sketch is of this acreage is not in dispute. The expansion of the acreage from 20 kanals 17 marlas to 53 kanals 12 marlas is said to have been due to deliberate encroachment on contiguous property effected on the directions of the respondent and this is the subject matter of the charge in Allegation 6 which reads :—

“Kanwar Reshi Singh sold land measuring 20 kanals and 17 marlas with a house situated in Village Noonwanan (Pahalgam) by registered sale deeds dated 30-9-1958, in favour of Bakshi Bashir Ahmed and Mrs. Shama Mir son and daughter of Bakhshi Ghulam Mohammad. 28 kanals and 5 marlas of Forest land and 4 kanals of land belonging to one Shri Banke Behari of Jammu were encroached upon and illegally added to the property purchased. The said encroachments were made by abuse of the official position of Bakshi Ghulam Mohammad as Prime Minister of the State and by the exploitation of that position by his relatives with his connivance”.

16.3. The case of the Government as regards this charge and the deliberate encroachment which is alleged against the respondent is simplicity itself. If the khasra numbers as they are located in the Revenue records are drawn on the sketch of this property, they cover only the pink and yellow portion of a revised sketch which was filed before me on 12th October, 1966. I find that it is not possible to explain or discuss the case of either party without reference to this sketch and I, therefore, make no apology for adverting to the details found in this sketch, though without having it before him one must find it difficult to understand the discussion. I, have therefore, appended hereto a traced copy of the revised sketch marked B,. The rest of the portions to the east of the line forming the eastern boundary of this plot is clearly forest

land and this measures 28 kanals and 5 marlas. There is no dispute either that there is a fence all round the property including in it Banke Behari's land which is plot No. 18 to the north of the respondent's compound, making it look as if it was part and parcel of the respondent's property. It is on the basis of this feature that the case of the Government rests. Added to this are the statements in the affidavits filed in support of the Government's case. According to them the respondent is alleged to have personally directed in 1958 the putting up of the fence around the entire property both on the north as well as along with the Circuit Road skirting the eastern edge of the compound and to have had the same renewed and re-done in 1960 after the reconstruction of the house was completed.

16.4. It was, however, admitted by the Government that even before the sale Reshi Singh had put up some constructions, consisting of a residential house, a kitchen with a corridor between the two which was clearly on forest land. The extent of this encroachment was stated to be 2 kanals and it was the case of the Government that all the encroachments beyond this extent were effected at the instance of the respondent himself.

16.5. The respondent in his reply raised these points :

- (1) He stated in paragraph 12 that if the land claimed by the Government as forest land was really proved to be forest land, he did not assert any title to it and that the Government were at liberty to establish their claim to it and take possession of the same.
- (2) In regard to the plot of Banke Behari to the north of the respondent's site, he stated that he never claimed it as his and sought support for this statement by pointing out that Banke Behari who had filed an affidavit on the side of the Government did not even complain that the respondent had trespassed or encroached upon that property. In regard to this also he asserted no title—as owner or even possessor. I shall be pointing out later the case that he set up as regards the manner in which the fence to the north and east of Banke Behari's property came to be erected.
- (3) In regard to the main part of the Government's case of his making a claim to the land east of the forest boundary pillars 19, 20 and 21 as marked in the annexed sketch filed on 12th October, 1966, his defence was that what he obtained by sale from Reshi Singh was not the portion in the plan marked pink but that the western-most line of the property started from the plain ground and did not include any part of the slope. I have here to mention that a substantial portion of the property purchased from Reshi Singh would, if the sketch were correct, be the slope which is rather steep, running from the beginning of the yellow portion and going down towards the west

and touching at the northern portion the Anantnag-Pahalgam Road which at this point runs alongside and parallel to the Lidder River.

As the respondent in his reply referred to several physical features of the property which according to him would negative the case of the Government and establish his own as regards the western limit of Reshi Singh's property which he obtained by purchase, it was suggested in his reply that I should inspect the property before determining the issue. Learned counsel for the Government also submitted that a local inspection would clear certain ambiguities which arose out of the manner in which the reply of the respondent was framed which made it not very intelligible. I, therefore, proceeded to Pahalgam on the 1st October, 1966 and inspected the property on the 2nd October. I shall be setting out a little later the result of this inspection, but meanwhile I shall proceed with the details of the reply filed by the respondent.

Starting from the level ground to the east of the slope, it was the case of the respondent that it ended at a drain which ran north to south at the back of the kitchen. The site claimed by the respondent as that which had been purchased by him is shown in the revised sketch in dotted lines.

- (4) He emphatically denied that he had ever directed the putting up of the fence round the property either in 1958 or in 1960.
- (5) His positive case was that Reshi Singh had constructed a house with a kitchen and had put up a wooden palisade around these structures and when the respondent reconstructed the house he utilised the same walls, only a little portion to the east of the then existing kitchen was newly constructed, thus enlarging the old kitchen. There are a few other structures on the property like a fuel shed, a mali's shed, a garage, and a sentry box and these he admits are on forest land, but the respondent's case as regards these is that the structures were all put up when the Prime Minister of India happened to spend a fortnight in the house in 1962 as they were considered necessary for the convenience of the staff that accompanied him.

16.6. I shall now proceed to examine the case of the Government in order to see how far they have established their case of a deliberate encroachment. Before, however, doing so, it is necessary to refer to a matter which took place at the time of the local inspection. The respondent who was present at the house to receive me and show me round, questioned the correctness of the sketch which was marked as Appendix B in the statement of the case, this in fact being merely a repetition of what he had already stated in his reply. In support of this

statement regarding the incorrectness of the sketch, the respondent drew my attention to the existence of an ancient survey map of the area prepared in Smt. 1966 called "Akslatha" which he said would prove his case. This document was handed over to the respondent, but as Khasra numbers noted in it were not easily decipherable, the respondent stated that I might have that document filed as part of the record in this allegation and that he would later on make his submissions based upon it. I immediately directed this document to be filed and the Government did so. I shall complete the narrative in relation to this document before I proceed to set out what I observed at the local inspection. The Government filed a statement supported by affidavits as to what was seen at the local inspection and in support filed a sketch marked as BI to which reference has been made as that which was filed on 12th October, 1966 and in these statements etc. they stated that the Akslatha the Survey Map of 1966 Samvat far from supporting the respondent proved that the places where they had located the several khasra numbers in their earlier sketch marked B were correct. The respondent who was served with copies of the sketch as well as of the affidavits and statements desired to have some time to file his reply after he was furnished with a copy of the Akslatha. A copy of the Akslatha was accordingly prepared by tracing it on a piece of tracing cloth and when it was handed over to the representative of the respondent, it was objected on the ground that it did not include the entirety of the area but had confined itself to the portion of the property now in dispute. As I considered that the tracing made should be sufficient to enable the respondent to file his reply and make any submissions that he desired in respect of the location of the various relevant khasra numbers, I suggested that he might make a copy for himself if he so desired from the original which was in the office. The representative of the respondent thereupon informed the office that the respondent desired to have a photostat taken of the Akslatha and desired permission to do so, which I immediately granted. All this was in November, 1966. The respondent, however, postponed arranging for the photostat stating it as the reason that sensitive paper was not available and that he would need some little time to arrange for this. Two weeks' time was granted and the representative informed of the same, but still no effort was made to this end and the representative was thereafter informed that without waiting for the photostat to be taken, counsel for the respondent could keep with himself the original Akslatha itself and proceed to place before me his submissions in relation to that document. As would be seen from what I have stated in Part I, the respondent never appeared thereafter and, therefore, this stage never reached.

16.7. I have examined the Akslatha myself and have compared the markings in regard to the several khasra numbers of those in the sketches prepared by the Government and I find that there is no substantial difference between the location of these khasra numbers in the Akslatha and in the revised sketch B filed on 12th October, 1966. If, therefore, I proceed merely on the khasra numbers as located on the spot with reference to the admitted revenue records, the case of the Government as regards the extent and nature of the encroachment might have to be held to be substantially proved.

16.8. But before this conclusion is reached, there is one matter flowing from the contents of the revenue records to which it is necessary to advert. Under the 5 deeds Bashir Ahmed and his sister had purchased Khasra Nos. 223/53, 296/54, 297/54, 298/54, 299/55, 295/55, 56, 57, and 226/58. It is the question of their location, or rather as to what was considered to be their location at the time of the sale that is in controversy. In the sale deed in relation to khasra 54 (Documents 3 and 4) of one moiety nearly in favour of Bashir Ahmed and of the other in favour of Shama Mir, the following construction is said to have been on this field. I am quoting from Document 3 :

"I Reshi Singh.....own in village Noonawanan (Pahalgam) the following immoveable proeprty—

1. One storyed house shingle-roofed ;
2. One storeyed kitchen shingle-roofed with a shingle-roofed passage linking buildings No. 1 and No. 2 ; and
3. One storeyed servant's quarter shingle-roofed with land appurtenant and attached thereto, amounting to....".

The same description is found in Docuemnt 4. The extent of this khasra number conveyed by Document 3 is 1 kanal and 18 marlas and this is 1 kanal and 17 marlas in Document 4. There is also a recital in both the deeds that in this khasra number there were fruit-bearing and non-fruit-bearing trees. Now admittedly these constructions are on forest land but the sketch in the Revenue records shows them as being in khasra No. 54 and in the proprietary land of Reshi Singh. It is stated by the Government that the recital in the revenue records that these constructions were on the proprietary land of Reshi Singh was erroneous. It is on this statement in the revenue records of the constructions etc. being on the proprietary land of Reshi Singh that the respondent rests his case. If really the buildings were on khasra No. 54, the other khasra numbers contiguous to No. 54, namely 223/53, 226/58, 296/54 and 295/55 must be pushed very much further to the east and if so pushed, they would cover a good part of the property within the dotted line shown in the sketch B1. It is said, and this is a statement to be found in the affidavits filed on behalf of the Government by one of the vendors who sold the property to Reshi Singh, that Reshi Singh after constructing the living rooms and the kitchen put up a wooden palisade round the property and enclosed them within a wire fencing. It is stated by the Government that the extent of land thus encroached upon was about two kanals, but that is on the basis that khasra No. 54 is west of the constructions and that the constructions themselves are not on khasra No. 54. On the other hand if the statement in the Jamabandi that the residence and kitchen etc. of Reshi Singh were on his proprietary land and that this was khasra No. 54 were correct then it looks to me as if there is something to be said for the case of the respondent as regards the location of the property which was purchased from Reshi Singh.

16.9. Pausing here, it is necessary to point out that the case of the Government as regards the exact line where the forest land begins is completely established by certain forest boundary pillars which were found on the land at the time of the local inspection. The forest survey records show the location of these boundary pillars and their number. On the spot it was found that there was a pillar which was lying on the

ground at the spot with its cone top damaged but on which the chiselling of the No. 19 was visible. This was near the spot where according to the forest survey, pillar 19 was located. After the spot was fixed, a measurement was made along a straight line to about the middle of the site where a boundary pillar on which No. 20 was marked was found fixed to the ground on the site. The next problem was to fix Pillar No. 21 which was at the extremity of this site. This pillar, however, was not found there, but it had to be fixed at the middle of the site on the northern side. Going lower down across the slope and beyond the road was pillar No. 22 found planted on the site where it ought to be according to the forest records and from its situation it was obvious that No. 21 had been correctly marked. Thus, the existence of boundary pillars bearing Nos. 22 and 20 on the spot where they were shown in the sketch and No. 19 by the side of the exact spot where it should have been clearly established that the area to the north of the line drawn from 19 to 20 and then on to pillar No. 21 was forest land. But the question for consideration is not so much as to whether forest land has been encroached upon, I find even the respondent does not seriously deny this, but as to what exactly was the land which Reshi Singh purported to possess as his own and which he conveyed to the respondent's son and daughter.

16.10. Coming next to the encroachments, they could conveniently be dealt with in three parts : (1) A triangular bit at the southern extremity beyond the wooden fencing which now exists to mark the end of the compound of the respondent. This bit is about $1\frac{1}{2}$ kanals and is, as already indicated, beyond the compound. In the plan originally prepared (Document 15) and the sketch B annexed to the statement of the case it was shown as being within the compound fence but on local inspection this was found not to be correct as now the fence is to the north of this bit. The case of the Government in regard to this bit is that the fence which now exists on the eastern side ran round the entire hypotenuse of this nearly right angled triangle and enclosed this bit but that recently, possibly after investigations started and this Commission was set up, the respondent removed the fence from the triangle and restricted his encroachment by omitting this area of about $1\frac{1}{2}$ kanals from his compound. This, however, can be proved only if I had some documentary proof of the existence of a fence beyond the point to the south where it exists at present or there was oral evidence to that effect. It is conceded that there is no such evidence. I can, therefore, proceed only on what I have observed and as this triangular bit to the south is not within the fence going round the property, I cannot possibly hold the respondent guilty of encroaching on this bit. In this connection I have to point out, that in support of their case that the respondent had occupied this land previously and that the fencing had been recently removed and the extent of the compound diminished, reliance was placed on two circumstances : (1) That on the surface of this triangular bit there were raised squares which indicated possible vegetable cultivation, and (2) the existence of a door way in this fence leading to the triangular bit. I do not consider that either of these establish the Government case. In regard to the first, namely raised squares on the land, the explanation of the respondent was that the ground was raised to serve as a floor for the tents which were put up

when the house was occupied by the Prime Minister of India in 1962. This explanation might or might not be true but I am not called upon to decide between the rival versions of the Government and the respondent which I would have to do only if there was evidence to show that he had fenced it all round this bit at one time and as I have already stated there is none such before me. Of course there was no evidence of the respondent having raised vegetables on the raised squares. Then, as to the existence of passage on the southern side of the fence this appears to me to be wholly irrelevant because an opening and passage was necessary to enable the occupants of the house to reach the Srinagar-Pahalgam road at the bottom of the slope to the west of the plot.

(2) I shall now proceed to the northern end and deal with the alleged encroachment on plot No. 18 on property belonging to Banke Behari. In the first place the respondent disclaims all title to or even possession of this property and Banke Behari who has filed an affidavit for the Government has not stated therein that his property has been occupied or trespassed upon by the respondent. As the respondent's explanation for the existence of the fence to the north and east of Banke Behari's plot is the same as that in relation to the fence on the eastern side, it would save repetition if I considered it as part of the discussion in relation to the middle portion.

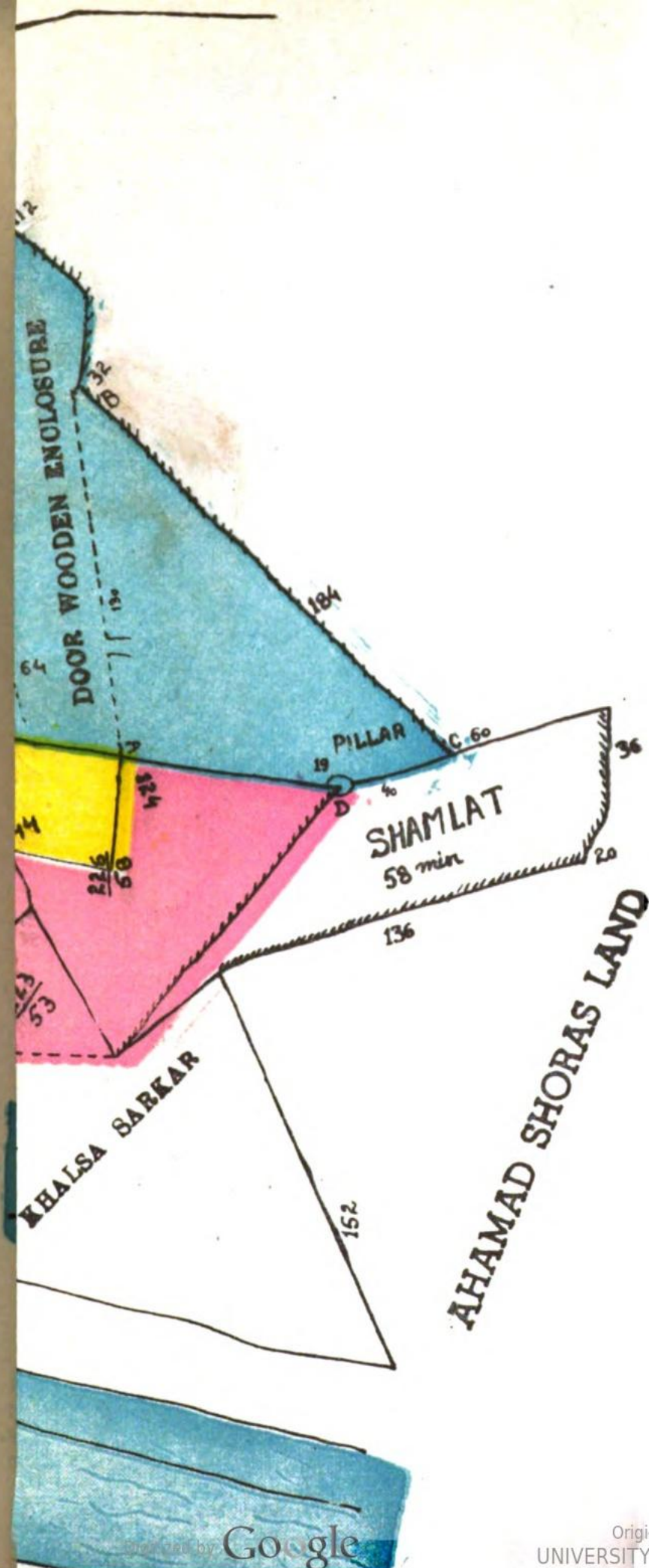
(3) Next we come to the fence on the eastern side and with it the structures on what the respondent himself admits are on Government land, namely the garage, the fuel shed, the sentry box and the mali's hut etc. The purchase from Reshi Singh was as would be seen from the earlier narration at the end of September, 1958. It is the case of the Government that very soon after the purchase, and in the same year the respondent directed a fence to be put in at the place where it now is by the municipal authorities of Pahalgam as part of the Beautification Scheme which was then in progress and that the cost of this fencing came out of municipal funds. In support of this case Government have filed several affidavits in which some of the subordinate officers and employees of Government speak to having been directed by the respondent to put up the fence at the places indicated by him and that thus the encroachment was his deliberate and conscious act. It might at this stage be pointed out that the Circuit Road beyond the fence had not been constructed at the date the property was purchased and that at that date the access from the house to the main road was by a pony path leading to the south and west from the residential building. It was the further case of the Government that the respondent re-constructed his house in 1960 by enlarging it and at that stage this fence which had been put in 1958 was removed and replaced by a new one at the instance of the respondent. Needless to say the respondent denies having given any instructions for putting up the fence in the place where it is now found. As the Government have examined no witness in support of their case as regards the instructions alleged to have been given by the respondent in 1958 or 1960, I necessarily discard the statements in the affidavits. It might have been possible for the Government to have produced before me the accounts or records of the municipal authority of Pahalgam which would establish that under the Beautification Scheme the fence was taken right up to the end of the easternmost extremity of this building which is the last building on this road, since it is the case of the Government that the expenses of

this fencing were debited to the municipal fund. But this, however, they have not done, so that I cannot assume either that the fencing was put in as part of the Beautification Scheme in 1958 or 1960.

16.11. I now take up the defence of the respondent in order to see how far that is probable. He states, and this is admitted, that the Prime Minister of India, Pandit Jawaharlal Nehru stayed at this residence during the summer of 1962 and that as part of the security arrangements the fence was put up all along the road covering not merely the compound of the house but even beyond and taking it up to beyond Bank Behari's plot. It was in connection with these security arrangements that he states that the sentry box, the guard room, the motor garage and other structures were raised in the compound to serve the needs of the large staff, who accompanied the Prime Minister of India. It being admitted that the Prime Minister of India was here, it follows that security arrangements must have been made, but the question is what were these arrangements. In support of his version the respondent has produced a letter which he states was written to him by Abdul Ghaffar Bhat demanding payment for the fencing etc. which he put up at the instance of the Government. I do not consider that this letter proves anything and it looks to me to be probable that it was got up as some support for his defence. But this letter being put aside, I have still to consider the nature of the security arrangements that would have been made. Now so far as the western side is concerned, there is undoubtedly fencing of barbed wire on posts of the type generally put up for security purposes around protected places. Though learned counsel for the Government laid stress on the fact that there was nothing on the records of the Government to show that any expenditure was incurred for putting up this fence, I am not able to persuade myself to hold that the fence on the western side at the bottom of this road at least was not put up when the Prime Minister of India stayed in the house. If that fence was put up and there is nothing on the records to show expense incurred on that account, then I do not see any improbability either in a fence having been put up on the edge of the Circuit Road as also round, Bank Behari's plot at the same time and the fact that there is no evidence of the expenditure being incurred would not disprove their having been put up as part of the security arrangements. As improbabilising this, it was said that the fence along Circuit Road was of the jungle-bund type which conformed to the same pattern as that found along the neighbouring properties and not of the barbed wire type along the western side and that this was some indication of this fence having been constructed as part of the Beautification Scheme and not as a measure of security for the Prime Minister of India. In my opinion, it need not necessarily have been so. If a fence of the jungle-bund type ran round the neighbouring properties along that road, it is possible that when for security purposes a fence was erected along the property in dispute the jungle bund type might have been used for the sake of uniformity. From the type of the fence used I feel unable to conclude that this fence must have been put up in 1958 or 1960 or that it would not have been put up in 1962 for security purposes. It would therefore follow that the respondent cannot be held responsible for the fence that exists on the eastern side or be held to have encroached on the property up to that limit by reason of the existence of that fence.

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16.12 I might now summarise the net result of the above discussion;

- (1) As regards the triangular bit on the south, there is no material on the basis of which I could hold that the respondent over encroached upon it
- (2) As regards the encroachment on Banke Behari's land of 4 kanals on the northern side (plot No. 18) —the only basis upon which the case of encroachment of this bit is rested is the existence of the fence on the eastern and northern sides of the plot. If this fence had as is possible, been put up in 1902, no question of encroachment could arise. I have only to repeat that the respondent claims no title to the plot nor does he even say that he is in possession of it.
- (3) As regards the forest land to the east of the yellow marked portion of the sketch B-1, the respondent does not claim to have purchased anything more than that which is indicated as within the dotted lines. Even as regards the area within these lines and up to the border of the yellow portion, the question as to whether there has been any trespass or encroachment by him depends upon the exact location of the land which was purchased from Reshi Singh. If, as is admitted, the 2 kanals on which the constructions put up by Reshi Singh stood were clearly forest land, has been shown in the Jamabandi as the proprietary land of Reshi Singh, it shows that these records are erroneous. This apart, as these constructions are stated in the Jamabandi to be on khasra No 54 and was conveyed under documents 3 and 4 as part of that khasra number, there is something to be said for the contention raised by the respondent that the other khasara numbers have to be located on the basis of Reshi Singh's house and kitchen being in khasra No. 54. This, of course, has not been done and a sketch drawn on that basis, nor have we any clear idea as to the actual demarcation of the property conveyed by Reshi Singh. In the absence of this information, it is not possible definitely to say (a) the extent of the encroachment by Reshi Singh and (b) whether there has been any encroachment and if so its extent, after the purchase of the property at the instance of the respondent.

In this connection two matters have to be noticed: (1) The respondent has marked on the site by a wooden fence the land which according to him he had purchased. This might or might not be correct but as the respondent has expressed himself in

unequivocal terms disclaiming all ownership of such land as is proved to be forest land, the title of the Government to their land can never be in jeopardy. (2) As regards the land to the east of the dotted line, and it is here that the new structures, e. g. garage sentry box etc. are to be found, the respondent disclaims all interest in it, his case being that the fence was put up on the road in 1962 on an alignment chosen by the officers who accompanied the Prime Minister. Whether this be correct or not the Government have not proved the case which they put forward, the finding must be against them. The net result of the above is that I hold that the charge is not established and I find accordingly.

17.1. The second category is concerned with a charge that the respondent abused his official position and got a contractor to supply materials or effect constructions of buildings etc. for Bakshi Bashir Ahmed and certain other relations of his for an inadequate payment. Incidentally the persons for whose benefit this kind of favour was shown are stated to have included not merely Bakshi Bashir Ahmed but others also including the respondent himself. These are the subject-matter of Allegations 14 and 15. In view of the nature of the charge it would be convenient to deal with the entirety of the allegation regardless of the person who, it is alleged, obtained financial advantage by reason this abuse of power. Allegation 14 charges the respondent with obtaining undue favours from contractor Abdul Chani Bhat as a quid pro quo for conferring undue advantages in Public Works Department and forest contracts on the said contractor at the expense of the State. This allegation reads as follows:—

- “(a) Bakhshi Ghulam Mohammad got a house in Pahalgam constructed by Shri Abdul Gani Bhat, Government contractor, who was paid only Rs. 7000 towards the construction of the building which is estimated to have cost Rs. 87,000. He got another house constructed for himself at Ishbar, Srinagar and a third house constructed for his brother-in-law Shri Shamas Ahmad Dy. Supdt, of Police by the same contractor without due payment.
- (b) Bakshi Ghulam Mohammad got additions and alterations carried out to the house owned by Bakhshi Ghulam Nabi, Abdul Majid and Bashir Ahmed at Pahalgam through Abdul Gani Bhat, P. W. D. contractor on inadequate payment.
- (c) The contractor was shown undue favours in P. W. D. and Forest contracts by Bakhshi Ghulam Mohammad or with his knowledge and connivance by the officers of the P. W. D. and Forest Departments.”

17.2 It would be seen that the allegation might broadly be divided into two parts, the first comprising paragraphs (a)

and (b) which deal with the favours shown to the respondent and his relations and paragraph (c) which is concerned with the advantages conferred on the contractor.

17.3 Taking first the first part, this relates to the benefit obtained by failing to make full payment for the work done by the contractor in respect of four buildings:—(1) The House at Mamal in Pahalgam purchased from Abdul Shora in 1950, (Allegation 14(b)), (2) the construction of a house in Noonawan in Pahalgam purchased from Reshi Singh in September, 1958, (3) a house at Ishbar purchased by the respondent himself in August 1963, and (4) a house belonging to Shamas Ahmed, Deputy Superintendent of Police in 1962-63 (the last three constitute Allegation 14(a)).

17.4 In addition to these four houses referred to in the allegation, in the statement of the case filed by the Government it was stated that in respect of the construction of a workshop for Fairdeal Motors and of a building let to the India Coffee house belonging to Hajra Begum in an adjoining plot on the Residency Road, Srinagar, the contractor was not paid Rs. 37,000/- odd and that besides these two a house at Chashmashahi on lands which had been obtained by sale and gift by the Yuvarani, wife of the Sadr-e-Riyasat, Abdul Ghani Bhat had effected constructions of the value of Rs. 20,911.00 as shown by his affidavit and his accounts, and that this sum had not been paid. I, however, ruled out these instances of undue favours received from the contractor on the ground that they were not in the allegation as notified and that I could not, therefore, inquire into the charge regarding these items. I shall, therefore, confine myself to the four items listed earlier and I shall deal with them in the order set out above.

17.5 Taking first the house at Mamal in Pahalgam, (allegation 14(b)), as would be seen from the facts narrated in respect of Allegation 4, a piece of land measuring 14 kanals and 3 marlas with some building thereon was purchased in 1950 in the name of Ghulam Nabi, Abdul Majid and Bashir Ahmed by two registered sale deeds in 1950. Some constructions appear to have been effected in 1954-1955. Thereafter in 1958 Abdul Ghani Bhat was engaged to make further additions, alterations and enlargements to the building. The work appears to have been started round-about April or May 1958 and to have been completed by October 1960. The total amount of expenses incurred by Abdul Ghani Bhat on this building is stated by him in his affidavit to be Rs. 1500/- and he states that he sent a bill only for Rs. 850/- and that the balance of Rs. 650/- had not been received. He further states that he put up a bridge across the river but does not remember at what cost. But if one went merely by the statement of the case filed by Government, it proceeds on the basis of a failure if not a refusal to pay Rs. 650/- towards the expenses incurred by Abdul Gani Bhat in respect of the

additions and re-constructions of the main house and of a failure to pay Rs. 700/- being the cost incurred by the contractor for putting up the bridge.

17.6. In his reply the respondent has raised several points, not all of them relevant or convincing, but at the fore-front of his case he states that he did not engage Abdul Ghani Bhat, but that the contractor was engaged by Bashir Ahmed with whom he had had dealings and was on friendly terms. The case of Abdul Majid who has also filed a reply in response to a notice issued to him under Rule 6(1) (a) is similar. I do not, however, attach any value to this defence, but what I have to consider are the following: (1) what was the total expenditure incurred by Abdul Ghani Bhat, (2) the total amount paid to him, and (3) why the balance was not paid.

17.7 The diaries of Abdul Ghani Bhat which were written up from day-to-day and in which entries were made regarding the expenses incurred by him for his several contract works and of the monies paid to him, have been filed and I do not see any reason for refusing to accept and treat them as an account maintained in the regular course of business.

17.8 Taking up first the case as regards the construction of the house at Mamal in Pahalgam, I have had a calculation made of the expenditure incurred by Abdul Ghani Bhat as entered in these diaries towards the cost of the reconstruction. The expenses of putting up the bridge also figure in this diary and are entered as if they were part of the expenses incurred in connection with the reconstruction of the house. The total amount of expenses incurred for the reconstruction of the building including the putting up of the bridge is Rs. 1,898/6/- and as against this there are two receipts, one of Rs. 850/- on 4th September, 1958 and another of Rs. 950/- on 25th October, 1958, making a total of Rs. 1800/-. If one went by these accounts, the amount unpaid would come only to about Rs. 98/-. But as Abdul Ghani Bhat himself says that he presented a bill only for Rs. 850/- though according to him the amount due was Rs. 1500/. I do not see how any inference of deliberate non-payment of any sum, not to speak of misconduct against the respondent, can be drawn even if the respondent's story that he did not engage Abdul Ghani Bhat be rejected. It was not, and could not be, suggested that the respondent was kept informed of the amount due to Abdul Ghani Bhat in respect of the expenditure incurred by him on this house and that notwithstanding that knowledge he deliberately refrained from paying the balance and thus knowingly obtained an advantage from Abdul Ghani Bhat. On this item, therefore, my finding is that it has not been established. Before passing on from this item there is one other matter to which reference must be made. In regard to the construction of the bridge though the diaries of Abdul Ghani Bhat show an expense of just over Rs. 700/- spread over

eight months, he says in his affidavit that he does not remember how much he spent on the bridge. He does not say he made a demand for the same, or even that it still remains unpaid. It is obvious that in the face of this evidence I cannot hold that he was not paid.

17.9 The 2nd item relates to the expenses incurred on the house at Noonawanan in Pahalgam. The purchase of this property which was in 1958 has been detailed when discussing the charge under Allegation 6. The constructions which is the subject of these charges now under consideration were during the year 1960-61. There was already a residential portion with a kitchen attached and a corridor linking the two at the time of the purchase of this property at the end of September 1958. The constructions which were effected by Abdul Ghani Bhat consisted in the enlargement of the kitchen and the re-construction of the living portion on the old foundations utilising portions of the walls on the ground floor. In passing it might be mentioned that it was to this house that 1500 flooring tiles manufactured by Nitcos were brought which is the subject of Allegation 15 (a) (iii) to be considered immediately after this charge. Abdul Ghani Bhat says in his affidavit that Nitcos not merely brought the tiles but had them laid.

17.10 According to the statement of the case Rs 30,000/- were spent on the reconstruction of this house out of which Rs. 14,000/- was spent by the owners themselves. The balance of Rs. 16,000/- was the amount spent by Abdul Ghani Bhat the contractor. Towards this the respondent is stated to have paid only Rs. 7,000/-, leaving the balance of Rs. 9,000/- unpaid. There is categorical statement supporting this allegation as set out in the statement of the case in the affidavit of Abdul Ghani Bhat. According to the diaries Nos 376, 382, 383, 384, 385 and 390 in which entries relating to this construction appear, the total amount expended between the dates 8th May, 1959 to 24th September, 1961 when the work was completed is Rs 17,038/10/-. It shows a single payment received from the respondent on 26th November, 1960 of Rs. 7,000/-. If one went by the accounts maintained by the contractor, therefore, the non-payment of Rs. 9,000/- as alleged in the allegation as notified and in the statement of the case is made out.

17.11 In view of this it is necessary to refer to the defence set up by the respondent and by Bashir Ahmed to whom notice was issued in respect of this allegation under Rule 6 (1) (a). As Bashir Ahmed was ostensibly the owner of this property, I shall deal with his reply in the first instance. He first starts by saying that Abdul Ghani Bhat, who admittedly had business dealings with Abdul Majid, entered into partnership arrangements with Abdul Majid under the name of Fairdeal Builders in October, 1959 with Abdul Ghani Bhat

as the active partner. Bashir Ahmed goes on to say that in view of Abdul Majid's interest in this partnership, the supervision of the construction in which he was interested was entrusted to Abdul Ghani Bhat for which he was paid "a sort of an honorarium for supervision". He does not care to explain what this was and how its amount was agreed to be computed. He adds that he never engaged him as a contractor and, therefore, the question of adequate or inadequate payment did not arise. This would appear to be almost an admission that the full amount to Abdul Ghani Bhat, if he were a contractor, was not paid. He goes on to state that Abdul Ghani Bhat was arrested in October 1964 and kept under confinement and that, therefore, the accounts of the construction supervised by him had not been finalised. The accounts were according to him running and payments were being received by Abdul Ghani Bhat in 1963, 1964 and 1965 and he has annexed to his reply a letter addressed to him by Abdul Ghani Bhat bearing the date 20th April, 1965 in which the latter purports to set out the total amount which he received on dates which are specified starting from 4th January, 1961 to 12th April, 1965 making a total of Rs. 3,89,256/-.

17.12 It appears to me that the story of Abdul Ghani Bhat being a partner with Majid in the firm Fairdeal Builders is true, but that does not answer the allegation or the gravamen of the charge contained in it. There is no denial here of the specific allegation that (a) Rs. 30,000/- were expended on this house and (b) that out of this Rs. 16,000/- had been expended by Abdul Ghani Bhat. The story that Abdul Ghani Bhat was merely a supervisor and not a contractor is hardly worthy of any serious examination because if he was not the contractor, Bashir Ahmed does not say who the contractor was and whom he supervised. The details given in the diary to which I have referred of the items of work done on which the expenses were incurred by him clearly show that he was working as a contractor and in no other capacity. In this connection, I might also refer to Document 10 in Allegation 15, by which one of the employees of Nitcos at Delhi directs their men at Pahalgam to deliver 1500 tiles to the "contractor" Abdul Ghani Bhat. This is the subject of the charge in Allegation 15(a)(iii) and will be dealt with after I complete the examination of Allegation 14. In fact this story of Bhat being engaged as supervisor merely is contradicted by Bashir Ahmed himself in his reply to Allegation 15. If this theory of supervision goes, what remains for consideration is whether Abdul Ghani Bhat was paid any amount in addition to Rs 7,000/-. It is here that the relevancy of the letter addressed to him by Abdul Ghani Bhat dated 20th April, 1965 which is annexed to his reply, comes in. I am satisfied that that letter is a fabricated document in the sense that it was got up for being produced in this enquiry, the figures put in being some on the basis of memory and some without any reference to facts merely to make it appear as if there was a running account between them. The story that

Abdul Ghani Bhat was arrested and kept in detentino has been denied by Government, and I have been assured by learned counsel for the Government that this has been invented merely to give an air of veracity to this letter. Notwithstanding this denial by Government Bashir Ahmed has made no attempt to substantiate the story of the arrest and detention.

17.13 The payment of Rs. 7,000/- which was the first payment made to him in respect of this house is found entered on the 26th November, 1960 (see diary 382) and in the diary it is stated to have been received *from the respondent himself*. Bashir does not say wherefrom he paid the amount, and, in fact, there is no assertion by him in categorical terms of himself and not his father having made this payment. In the letter annexed to Bashir Ahmad's reply the date given of this payment is 4th January, 1961. I have compared the figures of payments stated to have been received by Abdul Ghani Bhat set out in this letter with the debits to Abdul Ghani Bhat in the books of Bashir Ahmad and the Fairdeal Motors and they do not tally. A similar comparison made of the entries in the diary of Abdul Ghani Bhat with the books of Fairdeal Motors shows that they tally. In view of this I have no hesitation in rejecting this letter as a crude attempt at fabrication.

17.14 I shall now proceed to consider the reply of the respondent himself. His reply is quite simple. The house did not belong to him, but it belonged to his son and his daughter. It was they that made arrangements for the reconstruction and they alone knew how much was paid or was unpaid and not being the owner of the house and not being the person who had entrusted any contract work to Abdul Ghani Bhat who according to him also was merely supervising the construction, he cannot justly be blamed for nonpayment. I cannot accept this statement. The question now under consideration is not whether legally he was the owner. That ever since the house was purchased and reconstructed, he has been occupying it during the summer whenever he went to Pahalgam and has been invitnig his guests to stay there is, in my opinion, sufficient indication that he was fully acquainted with the house, its reconstruction and other details in relation to it. The fact that nominally the son was the owner does not, in my opinion, alter the position that is relevant for the purpose of considering this allegation. Besides the respondent has not questioned the truth of the statement in the diary of Abdul Ghani Bhat that it was he who personally paid the contractor Rs.7,000/- in November 1960, and he must have paid it out of his own monies, since Bashir Ahmad does not specifically say he did, and, therefore, it looks to me that he was well aware of the construction.

17.15 The fact that on the repondent's admission Abdul Ghani Bhat was a partner with Abdul Majid makes it more likely that he knew all the details. It is with this background that I

have to consider whether the amount due to Abdul Gani Bhat was paid or not and coming to this point there is nothing in the replies to contradict or deny the statement of the case and the affidavit of Abdul Ghani Bhat as regards (1) his having incurred an expenditure of Rs. 16,000/- and (2) his having been paid Rs. 7,000/- by the respondent himself. If the story of the running account claiming support from the fabricated document in the form of the letter dated 20th April, 1965 from Abdul Ghani Bhat be discarded, there is really no defence on the merits to the case of the Government that an amount of Rs. 9,000/- out of Rs. 16,000/- spent by the contractor was due and owing to him. I, therefore, find that the sum of Rs. 9,000/- was due to Abdul Ghani Bhat but remained unpaid for over three years. It is not disputed that Abdul Ghani Bhat was a contractor who was given several Government construction contracts, both before as well as subsequently. The non-payment of this sum for a period of 3 years taking into account the period only upto October, 1963 even if there was no demand, I would hold was an abuse of official position. I, therefore, hold that the charge of abuse of power is made out as regards this particular item.

17.16 The third item is as regards the construction of house of the respondent at Ishbar in Srinagar. In the statement of the case the details given of this charge are that Abdul Ghani Bhat was directed by the respondent to undertake the construction of his house, that the contractor spent Rs. 60,000/- on this construction and that out of this amount only Rs. 45,000/- were paid to him, leaving a balance of Rs. 15,000/- unpaid. Before considering the material placed by the Government in respect of this allegation, it might be convenient to refer to the answer of the respondent who had dealt with it in paragraphs 7 (v) and 8 of his statement in reply. He says in these paragraphs that the land was purchased by him in 1963 and that the construction was started only in October, 1963 a few days before he actually resigned and long after he publicly announced his decision to resign his office. After explaining how Abdul Ghani Bhat had been entrusted with work in Fairdeal Motors and in the house at Pahalgam, he states that it was not he, but his son who had asked Abdul Ghani Bhat to supervise the construction of the house at Ishbar. Finally he adds that owing to his own arrest and detention in September 1964 the construction could not be completed and that the house was still incomplete. He goes on to say that Abdul Ghani Bhat was also arrested, that his house was raided and that he had been made to give this false statement as regards the dues to him by reason of the pressure thus exercised by the Government. In regard to the main point of the non-payment he says that there was a running account and payments were made to Abdul Ghani Bhat from time to time, without denying in terms that Rs. 15,000/- had been left unpaid to Abdul Ghani Bhat. He contends that the account had not been finally settled

and that a final bill had not been submitted and that there was nothing to indicate that he refused to pay. Then he proceeds to attach the correctness of the entries in the diary and lists the items of work that still remained to be done, stating that the ceiling of the first floor had not been put up, the floor and fittings of the bath rooms had not been done, electric fittings had not been fixed up, doors and windows of the entire house had not been fitted, the sanitary fittings had not been laid, levelling of the ground, laying grass and fixing of glass panes had yet to be done.

17.17 Before proceeding further, certain matters arising out of this defence have to be stated. In the first place, the respondent's case that the construction was started only in October, 1963 is not correct since there are entries in the diaries which show that quite an amount of work possibly by way of stacking materials was done right from 18th August, 1963 (See diary No. 393 where it starts with the value of stones and timber procured valued at Rs. 1690/-). Then it is stated that Abdul Ghani Bhat was arrested and detained. As I have already pointed out this has been denied and does not appear to be true as no attempt has been made to substantiate it. Next it is stated, and this seems to be main part of the defence, that Abdul Ghani Bhat was not a contractor in any real sense but was employed merely to supervise the construction. Here again, as in the other case, it is not stated who the contractor was whose work Abdul Ghani Bhat supervised, nor does this story of this Abdul Ghani Bhat being merely a supervisor square with the complaint that he had yet to complete certain works whose details I have given earlier. If he was merely the supervisor and there was another contractor who had to do the work, there would be no question of the responsibility on the supervisor for the non-fulfilment by the contractor of his contract. Next, if as is stated in the reply, Abdul Ghani Bhat was merely a supervisor, how comes it that this supervisor puts his own money and financed the construction. It is asserted that there were running accounts between them towards which monies were being paid to him from time to time. This implies that Abdul Ghani Bhat was incurring expenditure on behalf of or on account of the owner—a position hardly consistent with but directly contradicting the case of his being a supervisor merely.

17.18 But the real points which require consideration are: whether there is anything to substantiate the case which Abdul Ghani Bhat has stated in his affidavit that he had spent Rs. 60,000/- towards which he had received only Rs. 45,000/- and that thus there was a balance due and unpaid in October, 1963 of Rs. 15,000/-. The material that has been placed before me by the Government, consists only of the entries in his diaries. These are to be found in diaries Nos. 393 and 394 and they run from 18th August, 1963 to 11th June, 1964. The total amount of expenditure which this account shows as having

been incurred in respect of this house is Rs. 31,217.50, but as I have pointed out in the case of Mamal House as well as in the house at Noonawanan at Pahalgam, the amounts received are entered, so that one is able to ascertain the net amount due to him. In this case the amount shown as due from the owner—the respondent—would, if the account were taken as correct, be over Rs. 31,000/-. There is no documentary evidence to establish that Rs. 60,000/- had been spent by Abdul Ghani Bhat on this house, nor as regards the payment to him of Rs. 45,000/-. In the absence therefore, of corroboration in the diaries of Abdul Ghani Bhat (Document II), I am unable to hold that the charge is proved. Before leaving this topic, I have only to add that though the respondent had set out in Paragraph 8 the details of the work that still remained to be done by Abdul Ghani Bhat, the respondent did not point out to me these items when I inspected the house in middle of September, 1966 though I must say it is possible that these were completed subsequent to 1964.

17 19 Though, therefore, the respondent has not established (a) that work remained to be done and (b) that there was a running account and that, therefore, even if some amount remained to be paid the same would be adjusted when the work is completed, I find it not possible to hold the charge proved for the reason that there is no documentary evidence to substantiate the charge. Besides, I cannot also ignore the fact that even on the entries to be found in diaries Nos. 393 and 394, only about Rs. 8,592/- worth of work was done before the respondent ceased to be the Prime Minister and that the bulk of the amount shown as having been expended on the building, namely, Rs. 22,625.50 was incurred after he ceased to be the Prime Minister. In the face of this type of account, if on the admission of Abdul Ghani Bhat in the affidavit which is affirmed as a fact by the Government in their statement of the case Rs. 45,000/- had been paid, it is not known whether that payment covered or did not cover the Rs. 8,592.00 which had been incurred prior to 7th October, 1963. If that amount had been paid, the Rs. 15,000/- which is said to have been due could only have been part of the Rs. 22,625.50 which was incurred after 7th October, 1963 and, therefore, the bill in respect of this balance could if at all have been presented only after he ceased to be the Prime Minister and it would follow from this that there can be no question of abuse of position so far as the respondent was concerned in refusing to pay, even taking it that there was a demand as regards which there is neither evidence nor even a statement of Abdul Ghani Bhat. In these circumstances I have no hesitation in holding that the charge as regards the house at Ishbar belonging to the respondent in Allegation 14 (a) is not established

17 20. The fourth and the last item to be considered under Allegation 14(a) is as regards the construction of the house of the respondent's brother-in law (wife's brother) Mr. Shamas

Ahmed, Deputy Superintendent of Police. Shamas Ahmed was allotted by Government under a housing scheme a plot of land in Jawahar Nagar Extension in Srinagar on 4th November, 1961—an allotment the propriety of which is challenged in Allegation 12. In the statement of the case in respect of the present allegation it was stated that in 1962-63 Abdul Ghani Bhat was directed by Bakshi Ghulam Mohammad to undertake the construction of the house of Shamas Ahmed. It was further stated that the amount spent by Abdul Ghani Bhat and owing to him was Rs. 37,000/- but that he was paid only Rs. 24,000/- and the balance of Rs. 13,000/- was not paid to him. These facts set out in the statement of the case are supported by Abdul Ghani Bhat in the affidavit that he has filed. Shamas Ahmed, on whom notice was served under Rule 6(1)(a) in respect of this allegation, makes this defence:

- (1) That it was not the respondent who suggested the employment of Abdul Ghani Bhat, nor did he direct the latter to do the construction. In support of this he states that his sister married the respondent only in March 1963 while the construction started much earlier.
- (2) That Abdul Ghani Bhat took a contract for effecting constructions as per plan which had been prepared for a total cost of Rs. 30,000/-.
- (3) He denies that he paid only Rs. 24,000/- as alleged in the statement of the case, but states that he paid Rs. 7,000/- in addition.
- (4) That for Rs. 31,000/- paid by him, he asked the contractor to render an account and that the same has not been done.
- (5) That the contractor has not yet completed the constructions he undertook and his bill has not been finalised.

The only documentary evidence in support of the Government case are, as would be seen from what I have stated already, entries in the diaries of Abdul Ghani Bhat. So far as the house of Shamas Ahmed is concerned, the relevant entries are in diaries Nos. 387, 390, 391, 392 and 393 and they are between 2nd December, 1961 and 12th October, 1963. The total amount of expenditure shown here as having been incurred by him including some cash payments entered in the diary as made by him to Shamas Ahmed or at his instance to others comes to Rs. 22,947.12 and the receipts total Rs. 10,300/-. In taking these figures into account, I am dismissing as not entitled to serious consideration the point urged by Shamas Ahmed that since the diary included the expenditure incurred on other as also payments received from them, the entries in the diaries were unreliable and could not be used against him. But the question that I have to consider is, does this diary which I

the only evidence because no oral evidence was led, prove the case that there is an outstanding to the extent of Rs. 13,000/- from Shamas Ahmed which remained unpaid in October 1963. No doubt, if one went merely by the figures from the entries called from the diaries, a sum of Rs. 12,600 and odd would appear to be owing by Shamas Ahmed, but the case of the Government and the affidavit of Abdul Ghani Bhat in support of that case is not that he did work to the extent of Rs. 22,947 and was paid Rs. 10,300/- but that he did work for Rs. 37,000/- and was paid Rs. 24,000/-. Neither the expenditure stated to have been incurred nor the payments admitted to have been received are to be found in the diaries. In view of this I am unable to hold in the absence of better material that the case of the Government has been proved.

17.21 Even if, however, on the basis of the figures found in the diaries I were to hold that though not Rs. 13,000/- at least Rs. 12,600 - were due and owing and that the same had not been paid still, there is no evidence to establish that Bakshi Ghulam Mohammad directed Abdul Ghani Bhat to do work for Shamas Ahmed. In regard to the three other properties it would be seen that he was the legal owner of one and the property had been purchased in the name of his son so far as other two items were concerned, but Shamas Ahmed is not in that category of relationship and, therefore, it would not be possible to draw the same inference against the respondent that it was owing to his intervention or his direction that Abdul Ghani Bhat undertook the job. In view of this circumstance, I must necessarily hold that the case of the Government as regards this item of the allegation in 14(a) should be held not proved.

17.22 The other part of the allegation which remains for consideration is that contained in 14(c) that Abdul Ghani Bhat was shown undue favours in P. W. D. and forest contracts by the respondent, the suggestion being that this was the quid pro quo for not pressing the claims for the balance of payments alleged to be due to the contractor. The undue favours are said to be in respect of two types of contracts: (1) contracts with the Public Works Department and (2) forest contracts. Taking up the P. W. D. contracts in the first instance, the material in support of this part of the case is to be found in the affidavit filed by one Karan Singh who was an overseer in the Public Works Department. He speaks to having examined and scrutinised a) the registers of tenders in the office of the Chief Engineer Roads and Buildings in Srinagar between 4-7-1951 to 11-5-1961, the tenders in the office of the Superintending Engineer, Kashmir Province for the period 18-4-1954 to 9-7-1964 and similarly the registers of tenders in the office of the Executive Engineer, Anantnag Division for the period 1955 to 1963. As a result of this examination he has prepared statements which have been marked A, B and C annexed to his affidavit. The irregularities spoken to by him are of two

kinds : (1) That single tenders of Abdul Ghani Bhat were accepted, and (2) that contracts were given to the minor members of his family. The minor members are said to be Ghulam Rasool Bhat son of a brother of Abdul Ghani Bhat, Gul Mohd. Bhat and Mohd. Iqbal Bhat being the sons of Abdul Ghani Bhat himself.

17.23 So far as the appendices are concerned, Appendix 'A' contains the particulars of the contracts which according to deponent were irregularly granted to Abdul Ghani Bhat by the office of the Chief Engineer. These consist of seven items and they are of a date from 1952 to 1963, the sixth bearing the date 1-3-1956. In the first place it was not disputed by learned counsel for the Government that there was nothing unusual for contracts being taken in the name of minors in this State. As a matter of fact the grantees of leases under Allegations 9, 10 and 11 were all minors though there were covenants on the parts of the lessees. I do not, therefore, attach any significance to these contracts being taken in the name of minors and shall proceed on the footing that the contracts had been granted to Abdul Ghani Bhat himself. The only ground of objection in regard to items 2 and 3 was that it was made in the name of a minor. As regards item 1 it is found that there were two tenderers and the work was split between the two and at the same rates. In items 5 and 6, there were two tenderers and his was the lowest tender, hence there was no irregularity in accepting it. As regards items 4 and 7 of the years June 1955 and August 1963, the sole objection was that it was on the basis of a single tender. As regards this point about acceptance of single tenders, it was not suggested that there were no other cases in which single tenders of contractors were accepted, nor was it suggested that there was anything improper in the method of calling for tenders. It was not suggested either that the rates offered by the contractor were unduly advantageous to him by comparing it with the standard rates at which work of that nature was performed by other contractors during the same period. I do not, therefore, see any point made in regard to the contracts given to Abdul Ghani Bhat set out in Appendix 'A' to Karan Singh's affidavit. I have only to add that I do not consider the contracts given to him between the years 1952 to 1956 as having any relevance for considering the charge in Allegation 14 against the respondent.

17.24 Taking next the contracts granted by the Executive Engineer, Anantnag set out in Appendix 'B' they were 36 in number. I pass over the items upto item 14 because it concerns a period before 1958 when Abdul Ghani Bhat undertook work for any member of the respondent's family. As regards item 15, the point made in regard to it was that it was allotted against a single tender at rates which worked out to be high when compared to the prevailing rates and was besides allotted to a minor. I sought information from the

learned counsel for the Government as to the basis upon which Karan Singh had made this note that the rates were high compared with the prevailing market rates. Learned counsel was unable to place before me information on the basis of which this statement of the deponent was based. Item 16 was a case where there was admittedly more than one tender and Abdul Ghani Bhat's was the lowest. As regards items 17 and 18, the only point made was that it was granted to a minor and for the reasons already stated, I do not think that anything flows from it. Items 19 to 35 were cases where there was more than one tender and was allotted to the lowest tenderor, but it was given in the name of a minor and this was the only objection. The last item in this group is a contract dated 16th September, 1960 where a work of the value of Rs. 8,000/- was said to have been allotted to a minor on receipt of a single tender. In this case again I sought information as to whether the rate on which the contract was given was above the prevailing market rates, but learned counsel was unable to furnish any information on this point.

17.25 The next group of contracts is that granted by the Superintending Engineer and they have been collected by Karan Singh under Appendix 'C'. There are 16 items in this list. It is unnecessary to go over them one by one, but it is sufficient to point out that in the case of some of them the point is that it was entered into with a minor, in the case of others that it was on receipt of a single tender. Here again no material was placed before me to show (a) that the notice calling for the tender had not been properly published, or (b) that the rate which was offered to the contractor was higher than the prevailing rates.

17.26 The contracts given to Abdul Ghani Bhat and his minor sons by the Executive Engineer, Anantnag have been tabulated by Harbans Lal Maini in an affidavit which he has filed to which he has annexed the tabular statement. As regards these items also which are 36 in number, the points made are the same. There is nothing to indicate in cases where the contract has been given to Abdul Ghani Bhat or any minor relation of his on single tender that the rate on which the contract was given to him was higher than the rates prevailing in the market at the time of the contract.

17.27 So far as the P. W. D. contracts are concerned apart altogether from the question as to the part played by the respondent in the granting of these contracts, I do not find that there is any material on the basis of which I could hold that undue favour was shown to this contractor or undue advantage gained by him. From the circumstance that from 1952 onwards this contractor has been on the list of approved contractors and has regularly been employed for executing several works, it is likely that the Department thought him capable of doing efficient work and, therefore,

did not mind giving him the contracts even if this was a sole tender. By reason of this, however, it is not possible nor would it be proper, to hold that any undue favour had been shown to Abdul Ghani Bhat.

17.28 The next part of the allegation is that with regard to the forest contracts. The principal fact relied on in this connection is what is stated in paragraph 22 of the statement of the case. Abdul Ghani Bhat was given a forest lease for one year of Compartment No. 34—B Lidder in the year 1959 the royalty for which was Rs. 3.15 000/-. According to the conditions of the lease the felling of the trees had to be completed by 15th December, 1959 and he had to vacate the compartment by 15th December, 1960. The royalty amount had to be paid by him in three instalments, the last instalment according to the terms of the contract being due on 1st June, 1960. The gravamen of the charge in regard to this contract was that in spite of the aforesaid conditions Abdul Ghani Bhat was given three extensions to complete the fellings, first up to 30 November, 1960 then up to 30th November, 1961 and again up to 31st October, 1962, and the dates for vacating the coupe being accordingly extended, the last one being up to 31st December, 1963 and this in spite of his failure to pay the royalty due from him. The second point in regard to which favour is said to have been shown to Abdul Ghani Bhat in respect of this forest lease was that he was permitted to remove a sizeable quantity of wood from the forest which under one of the terms of the lease he had to sell to the Forest authorities at pre-determined prices, and this was stated to be for the reason that the price in the open market was higher than what had been fixed as the price payable by the Forest authorities. Lastly, it was said that an amount of Rs. 64,000 odd was still outstanding against this contractor although he had completed the work of felling in the Compartment and had removed all the timber sold to him. There were certain other matters also which were said to be instances of favour shown to this contractor, but they were not pressed by learned counsel for the Government at the hearing.

17.29 Before discussing the evidence adduced by the Government in support of this part of the charge, I might as well refer to the reply of the respondent. After denying that any undue favour was shown to Abdul Ghani Bhat, he asserted that there was nothing in the record to establish that even if undue favour was shown, he was responsible for these extensions of time which were granted to the lessee. In one of the documents forming part of the file to which reference will be made later, it was recorded that Abdul Ghani Bhat was allowed to continue the work of the lease "on the orders of the Hon'ble Prime Minister" and the Government had stressed the noting on this file in order to establish that it was at the instance of the respondent that these extensions and favours were granted to the lessee. The explanation of

the respondent in regard to this statement in the file is that he accepted what was stated by the Conservator of Forests Mr. G H. Basu contained in the affidavit which he filed on behalf of the Government. The relevant portion of this affidavit reads:

"You were in August 1962 when I was at Pahalgam Shri Abdul Ghani Bhat approached the Hon'ble Prime Minister on (the) spot that for want of sanction from competent authority the extraction work in the forest is at standstill, when in response to the verbal enquiry, I explained the whole case to the Hon'ble Prime Minister who then advised me to permit continuance of work and the matter to be referred to Govt. for confirmation of verbal orders and expediting formal sanction Accordingly I directed Divisional Forest Officer Kashmir to allow the work and a copy of this order was submitted to the Chief Conservator of Forests for information and favour of getting the orders of Hon'ble Prime Minister confirmed. The Chief Conservator of Forests accordingly addressed the Deputy Secretary to Government (Forests) ... a copy of which was endorsed to me".

17.30 The respondent went on to add that he merely advised the Conservator of Forests to redress the grievance of the lessee and that this cannot be construed as any undue favour since it was the policy of the Government to grant extensions without stopping the work and in support of this last contention he has referred to several instances where extensions were granted. Before considering the adequacy of this explanation, it is necessary to refer to the documents in connection with this extension granted to Abdul Ghani Bhat in some detail because of the stress laid by the learned counsel for the Government on the charge.

17.31 As I have already stated, Abdul Ghani Bhat was the successful bidder for the lease in respect of Compartment 34-B for 1959 60 and he had to pay a royalty of Rs. 3,15,000/- subject to the conditions of the tender notice. Under the agreement (Document 17) the last instalment of the royalty amount was payable on 1st June, 1960. Under clause 11, the period of felling was to cease on 15th December, 1959 and under clause 12 the lessee was to quit and vacate the compartment by 31st December, 1960. The royalty was payable one-third every six months ending 1st June, 1960. Under the conditions set out in a slip attached to page 4 of the agreement which was an addendum to paragraph 16, there was an obligation on the lessee to open depots at specified places and stock timber for sale there at fixed rates.

17.32 In October, 1959 the lessee made an application for extension of the period specified under clauses 11 and 12

by a period of one year—under clause 11 to the end of November 1960 and under clause 12 to the end of December 1961. The Range Officer supported this application for the reason that by the time, he could work the coupe, snowfall had started and then in July 1959 there was a disastrous flood making it impossible for him to work and so he had only about three months in which he could work in that year. Besides, the contractor had also asked for supplementary markings which had not been done. This was agreed to by the Divisional Forest Officer to whom it was forwarded and from him on to the Conservator of Forests. The Conservator of Forests recommended that the above extension might be granted on a penalty being levied of Rs. 500/-. He also pointed out that as against Rs. 3,15,000/- royalty due, the lessee had paid only Rs. 27,693/- leaving Rs. 2,87,307/- outstanding. After stating these facts he left it to the Chief Conservator to recommend or not to recommend to the Government the extension prayed for. The Conservator of Forests in his note dated 26th April, 1960 recommended the extension suggested by the Range Officer in view of the floods in July. The Chief Conservator of Forests accepted this recommendation and granted the extension on 28th April, 1960 and a copy of this was forwarded to the Deputy Secretary (Forests) for information and for communicating the approval of the Government to the action taken by the Chief Conservator of Forests pointing out specifically that the extension had been sanctioned in consideration of the impediments caused by the 1959 floods. In the formal order that was passed on 12th May, 1960 (Document 22) he made it clear that the overdue royalty must be realised and that this was made a condition for the grant of the extension. The Deputy Secretary by his letter dated 23rd May, 1960 (Document 23) desired the Chief Conservator of Forests to furnish a full report regarding the stuff removed and that still remaining in the forests, the royalty position and all other details connected with the lease. He also queried whether the Chief Conservator of Forests was competent to sanction the extension. He thereafter sent the papers down for ascertaining the facts called for by Government. The lower officers sent up the details and thereafter the Chief Conservator sent a Communication dated 6th December, 1960 to the Conservator, Kashmir south. He pointed out that up to the end of September 1960, deducting the payments received towards royalty from the lessee over Rs. 2 lakhs were due and he expressed alarm at this condition, particularly in view of the paucity of stocks to cover the outstandings. He therefore, directed him to see that all the royalty outstanding was recovered before the close of the financial year if not earlier. The details of the stock position which were called for were however not fully ascertained.

17.33 Meanwhile as the year was running out there was another application for a second extension for another year. This was supported by the Conservator of Forests Mr. Bassu in a communication dated 31st March, 1961. The extensions recommended were under clause 11 to the end of November

1961 and under clause 12 to the end of September 1962. He pointed out that by the date of his letter the royalty outstanding from the lessee was Rs. 1,87,777/- including by way of interest Rs. 12,000/- odd, but noted that the lessee had promised to pay Rs. 30,000/- within the month which with the Rs. 27,000/- due to the lessee on other accounts would reduce the outstanding to about Rs. 1,40,000/- But when this letter came to the Chief Conservator, his office made a note on it that the grant of the first extension by the Chief Conservator had been objected to on the ground that he was incompetent to grant it under the rules and that besides as the entire royalty had not been recovered from the lessee as had been required as a condition of the grant of the extension, Government might not view the proposal for further extension favourably unless the royalty due was paid and the stock position fully reported. On this note the matter was held back untill fuller details were known, not merely on the matters set out earlier but also as regards compliance with condition as regards the supply of timber as required by the annexure to paragraph 16 of the agreement set out earlier.

17.34 Though Government had not sanctioned the extension nor even the Chief Conservator, still by a Communication dated 23rd May, 1961 of the conservator (Document 26) the lessee was allowed to continue the work pending receipt of a formal sanction, the Divisional Forest Officer being directed to obtain a stamped undertaking from the lessee to the effect that such orders as the Government might ultimately pass in regard to the extensions which had been prayed for would be binding on him even though the work was allowed to be proceeded with. This was a result of the verbal orders of the Chief Conservator and the Conservator requested that these verbal orders may be confirmed and formal orders sanctioning the extension in anticipation of Government orders may be forwarded. When the question of extension was put up to Government for formal sanction by the Chief Conservator, the officer in his report dated 25th July, 1961 pointed out that the stock position had not yet been ascertained by the Divisional Forest Officer "in the pretext of snow". While all this correspondence was going on, the period for which extension was sought under clause 11 had expired long before. In view of this situation he sought an extension under clause 11 to November 1961 and under clause 12 to September 1962 subject to proper safeguard to ensure the recovery of Rs. 1,56,000/- odd which was still due from the lessee. In the note which he then forwarded to Government, the chief Conservator added in manuscript a passage in which he said that though more than half the royalty yet remained unrecovered, yet the Divisional Forest Officer and the Conservator had not given any clear indication as to the progress of the lease and the stock position and whether the stock on hand which would be enough to cover the liabilities. He stated that he knew that on the other hand the lessee had been permitted to continue to sell his stock

and he desired that the entire case to be referred to the Government as regards the grant of the second extension as recommended by the Conservator on payment of a penalty of Rs 500/-. With this note the application for the second extension went to the Government by a formal letter dated 8th August, 1961. When these were received, the Deputy Secretary wrote back to the Chief Conservator of Forests (vide Document 29) to obtain a report from the Conservator (a) of the grounds on which he anticipated sanction of Government for the extension, (b) regarding the reasons for the lessee not completing the felling during the extended period, and this was in addition to the information already called for. The question as to the competence of the Chief Conservator or lower authorities to grant extensions had been raised by the Accountant General vide his D. O. letter No. OAD/10(a)ii/61-62/5852 dated 16th September, 1961 who referred to clause 43 of the agreement wherein the concurrence of the Government had to be obtained for extensions for periods exceeding six months. The Accountant General had desired to know whether there had been any formal orders of Government extending the periods fixed in clauses 11 and 12.

17.35 The Chief Conservator replied to the Accountant General on 10th October, 1961 saying that so far as the first extension was concerned, there had been a general order of Government under which extensions were granted for a year in respect of leases which were pending in July 1959 because of the floods in that year and as regards the second extension that the matter had been referred to the Government and had been still pending with them.

17.36 The lessee did not complete his fellings even within the period covered by the second extension and notwithstanding that even the second extension had not been sanctioned by Government, the Divisional Forest Officer made a recommendation on 27th February, 1962 (Document 30) for the grant of a further extension of one year which was supported by the Conservator of Forests. The stock position was adverted to on the basis of a report of the Range Officer and a recommendation for the grant of this extension was made notwithstanding that royalty to the extent of Rs.1,30,549 was outstanding. It was, however, suggested by the Divisional Forest Officer that for this third extension penalty of Rs. 1,000/- may be levied. If this extension were granted, the period under clause 11 would extend to the end of October, 1962 and the period under clause 12 to 31st December, 1962. He, however, added that this would be the last extension that would be granted.

17.37 On this the Conservator noted that it was a bad lease. The lessee was needily lingering on with his work and

the department seemed to be quite helpless in the matter. They had yet to recover Rs. 1,30,549/- from the leasee. The stocks on hand including the staff extracted would hardly be enough to recover the outstandings. He however in his letter (Document 31 dated 30th April 1962) to the Deputy Secretary, General Department (Forest) said that if the extension were refused, the amount of royalty due might become a bad debt. So he said there was no alternative but to uphold the Conservator's recommendation. He, however, suggested that the penalty might be raised to Rs. 1,500/-. The reply to the Chief Conservator is Document 32 dated 28th May, 1962. In this the Chief Conservator was directed to furnish information as regards the period of the lease and when the lease was granted, the lease rate for the various kinds of timber, the quantity of timber marked and the quantity extracted, how the lease rates compared with the prices of timber in the adjoining compartments, on what basis the amount of penalty was being fixed when the extensions were granted, what would be the benefit to the firm if the extension were granted and to the Government if the extension were refused' and why sanction was anticipated in this case. It does not appear that any reply was received to this, but meanwhile on the 25th June 1962 a notice was issued to Abdul Ghani Bhat pointing out that a total sum of Rs. 95,313/- was due from him up to then and requesting that the amount due might be remitted at an early date. It was on 18th August, 1962 when matters were in this condition that we have Document 33 in which the Conservator of Forests says ; "The requisite sanction to the extension is still to come while the periods recommended (October 1962) and December 1962) are about to expire. In order to avail of this short period left now and as desired by the Hon'ble Prime Minister, you will please allow the lessee to resume work after obtaining a stamped undertaking to the effect that the Government decision in regard to the sanction of the extension is binding upon the lessee," and the Deputy Secretary was also informed that "the Hon'ble Prime Minister has desired to allow continuance of work of the above lease.....In the meantime you will kindly get the verbal orders of the Hon'ble Prime Minister confirmed." (Document 34).

17.38. The queries in Document 32 were answered in Document 35 from the Conservator of Forests to the Chief Conservator of Forests dated 31st May, 1963 in which the entire history of this lease is set out. The amount outstanding till the end of April 1963 was Rs. 86,173/-. Three extensions had already been granted—one dated 12th May, 1960 on a penalty of Rs. 500/-, the second on 8th August, 1961, the third was recommended and the work was allowed to continue under the verbal orders of the Prime Minister and he, therefore, recommended that the lease be extended to the end of September 1963 for felling and to the end of December 1963 for vacating the compartment. There was a promise that the lessee would be compelled to pay up arrears of royalty.

17.39. Document 36 dated 4th July, 1963 was addressed to the Government by the Chief Conservator seeking sanction for the extension and this was granted on 17th July, 1963 (vide Document 37) which also expressed approval of the sanction already granted by him. In October, 1963 the lessee Abdul Ghani Bhat who had not yet paid the balance of the outstanding of Rs. 80,506/-, though the lease had expired, was addressed by the Government to pay up these arrears by March, 1964.

17.40. The respondent ceased to be the Prime Minister on 7th October, 1963 and thereafter the question of the recovery of the arrears from the lessee as well as further extensions of the periods of the lease came up before the Government for consideration. The Conservator of Forests addressed the Chief Conservator on 12th May, 1964 (Document 38) pointing out the earlier history of this lease and to the fact that by 31st March, 1964 the royalty outstanding had been reduced to Rs. 42,572.00, recommended an extension of the period under clause 11 to the end of September, 1964 and of that under clause 12 up to the end of December, 1964. This last extension which was said to be necessitated by the cloud-burst at Pahalgam and was recommended by the Conservator and was granted by the Chief Conservator on 12th August, 1964, and thereafter a further extension was granted up to June, 1965.

17.41. These being the facts connected with the extension granted to Abdul Ghani Bhat to work his lease of 34 B Lidder from 1959, I shall now consider—

- (1) the favours that are relied on ; and
- (2) the part played by the respondent in the granting of these favours.

So far as the first extension is concerned, it was covered by a general order passed in respect of all the subsisting leases and was necessitated by the floods of July, 1959. The extension from 1960 to 1961 was granted by the Chief Conservator of Forests on a recommendation made unanimously by the Range Officer, the Divisional Forest Officer and the Conservator of Forests and it was said to be the method by which alone the arrears of royalty could be recovered and, therefore, was conceived to be as much in the interest of the Government as of the lessee.

I have examined the files not merely of cases referred to by the respondent in his reply as cases in which extensions have been granted on these grounds, but also of other forest leases in the files placed before me in connection with Allegations 29 and 31 and I find that though extensions were not granted as a matter of course, they were frequently granted and granted in order not merely to secure to the lessee the benefit of this lease, provided he had shown diligence but in the interest of revenue for enabling the collection of royalty at the time of the removal of the cut timber. It is no doubt true that even after this extension by the Conservator of Forests the Government granted a short extension in July 1962 and this is what is put against the respondent. In considering this, however, I cannot ignore the fact that after the respondent ceased to be the Prime Minister, extensions still continued to be granted and the lessee was given time to remove the felled timber right up to June 1965, obviously because it was considered to be in the interest of the State, in order to recover, if possible, further amounts of royalty due from him. I have narrated in such great detail the reasons for the several extensions and the manner in which they were granted for showing that there is no justification for imputing to the respondent any misconduct in the way of showing discriminatory favour to this lessee. Two or three of these extensions were, of course, granted during the period when he held the office of the Prime Minister and no doubt he was a contractor who was working for him and for his relations and on his own admission he was a partner with his brother Bakshi Abdul Majid in a business carried on in the name of Fairdeal Construction Company. These circumstances can only induce a sense of circumspection or even suspicion, but they cannot by themselves stamp every act of the respondent which might be to the advantage of the lessee as a piece of improper favouritism.

17.42. Another matter that is relied on in support of the charge in Allegation 14 (c) is that on the verbal orders of the respondent the lessee was permitted to proceed with the work even at a time when the extensions had not been sanctioned. I do not attach any significance to this either. The circumstances were that the lessee had applied for extension, that application for extension had been recommended by the Conservator and the matter had been forwarded to the Government for sanction. If the respondent considered that owing to the facts mentioned to him by the Conservator the extension was likely to be sanctioned by the Government, I do not see any impropriety in the respondent verbally ordering the officers to permit the lessee to continue the work. Besides, in view of my finding that no misconduct attached to the respondent in the grant of the extensions which I have discussed earlier, his direction to the officers to act in anticipation of sanction appears to me to be equally blameless.

17.43. It was next said that the respondent was responsible for the large amount of arrears of royalty not being cleared by the lessee and that notwithstanding this feature the extensions were being granted, so much so that even at the time when the respondent ceased to be the Prime Minister there was a large amount of arrears of royalty due from the lessee. I consider that there is less justification for this charge than even those disposed of. The correspondence discloses—and I have set out

the whole of it in the long and detailed history of the applications made and the orders passed for the extension of the lease—that efforts were being made by the departmental officials to get the lessee to pay up and reduce the amount of his royalty dues. I need only point out that even at the stage of the first extension the order passed by the Chief Conservator was to the effect that the extension would be granted and could be availed of only on condition of the lessee paying up the whole of the arrears of royalty due. If notwithstanding these orders the royalty amount was not collected I do not see how any blame attaches to the respondent. It has only to be added that even after the respondent ceased to be the Prime Minister extensions were granted notwithstanding that there were still arrears of royalty due and in the face of this I do not find it possible to uphold the submissions of the Government that it was because of the interest which the respondent took in the lessee, and his interference that substantial sums of royalty remained in arrear and that notwithstanding these arrears extensions and other favours were being granted to the lessee.

17.44. The last item of the charge relates to the failure on the part of the lessee to supply the quantity of timber which he was under an obligation to supply to the Department. Under the terms of the agreement (Document 17) the lessee had under a slip attached to clause 16 to supply to the Department the following quantities of timbers: 24,000 cft. of kail logs and poles at Khanabal at Rs. 2.25 per cft. of kail log and Rs. 1.75 per cft. for poles. He had further to open a timber sale depot at Pahalgam at a place selected by the Department on or before the 15th April, 1959 with a minimum quantity of 30,000 cft. of kail and 15,000 cft. of fir and spruce and sell this timber to the Department kail at Rs. 2/4/- per cft. and spruce and fir at Rs. 2/- per cft. It is the case of the Government that the lessee failed in fulfilling the latter part of this undertaking but yet he was permitted to get away this lapse by reason of abuse of power on the part of the respondent. I shall deal with this portion of the charge in two parts:

- (1) whether the Government had established that there was a failure on the part of the lessee to fulfil his undertaking ; and
- (2) whether the respondent had been responsible for either this default on the part of the lessee or in condoning it.

The charge in relation to this is contained in paragraph 22 of the statement of the case and it reads thus—

“(ii) According to the conditions of the tender Shri Abdul Gani had to dump 30,000 (cft) of kail and 15,000 (cft) fir and spruce which were to be sold on proper permits issued by the Divisional Forest Officer Kashmir at Rs. 2.25 for kail and Rs. 2/- for fir and spruce.

“(iii) In breach of these conditions, Shri Abdul Gani dumped only 8333 cft. of kail and 3912 cft. of fir. Major portion i.e. 7146 cft. of kail out of the dumped quantity

was allowed to be removed by him. This was done to accommodate him as the price for which the aforesaid timber was saleable in the market was much higher.

17.45. I shall deal with the documents in relation to these matters presently, but before I do so I think I should refer to the statement in the affidavits filed on behalf of the Government. Kashi Nath Kaul, a Forester who was at the relevant date in charge of the Pahalgam Block, Lidder Range, stated in paragraph 5 of his affidavit after referring to the term in the agreement of lease—

“Against this the said Shri Abdul Gani Bhat has dumped only 8333 cft. of kail and 3912 cft. of fir and spruce in the depot as per statement of the concerned Forester. . .”

and in paragraph 6—

“The sale depot Register maintained at Pahalgam shows that Shri Abdul Gani Bhat....has been issued 7147 cft. of kail and fir in long form under permits issued by the then Divisional Forest Officer....”

and in paragraph 7—

“That the sale register indicates that major portion of timber from the depot has been issued to Shri Abdul Gani Bhat by the Divisional Forest Officer.”

To the similar effect is a statement of one Abdul Ahad Bhat who was a Range Officer in the service of the Government. In support of these statements about the lessee removing timber which he had purchased the Government have compiled a statement showing the carriage of timber from the forests between 7th April, 1961 and 20th August, 1963 made up from entries arranged in order of date culled from the diaries kept by Abdul Gani Bhat (Diaries 385 to 393) and filed in Allegation 14. These entries show that timber was carried from Pahalgam to Srinagar on certain trucks whose registration numbers are given, for being used in the work of Bashir Ahmed. I shall refer to the relevance of this statement after completing the examination of the facts in relation to the non-supply of timber to the depot at Pahalgam.

17.46. Document 40 dated 9th March, 1961 (Range Office File No. 8/62-63 Volume I Page 194) is a statement of timber purchases from the lessee of compartment 34-B Lidder. This shows that 8333.59 cft. of kail priced at Rs. 2.25 per cft. and 3912 cft. of fir at Rs. 2/- per cft. was delivered by him at Pahalgam and purchased by the Forest Department. It is common ground that there are no other similar entries of purchase in the files. On 13th June, 1961 the Range Officer Lidder addressed a communication to the Divisional Forest Officer, Anantnag (Document 42) pointing out this obligation of the lessee under the contract and to the fact that he had brought there only the quantity referred to in Document 40 and requesting this higher official for instructions as to the action to be taken in view of the default on the part of the lessee. We do

not, however, have anything to indicate what exactly happened or what action the Divisional Forest Officer took on this communication. The next reference to the failure on the part of the lessee to make this supply is to be found in Document 30 which is dated 27th February, 1962 from the Divisional Forest Officer to the Conservator, South Circle. The main part of this letter deals with the application by the lessee for extension of the period specified in clauses 11 and 12 which he recommended, but in paragraph 5 he referred to the matter with which we are now concerned. There he stated that in regard to the commitment to the C.P.W.D. of 24,000 cft.—this was stated to be for the purpose of the construction of the tunnel—the lessee had not merely fulfilled his contract of supplying 24,000/- cft. but had besides supplied 4,000 cft. in excess. He, however, made no reference to the manner in which the lessee had fulfilled or failed to fulfil his obligation to supply timber to the depot at Pahalgam. Evidently the matter was under correspondence between the Divisional Forest Officer and the Range Officer for we find in Document 20 dated 20th January, 1963 which is a communication from the Divisional Forest Officer to the Range Officer, Pahalgam complaining of the latter not having done his duty by Government by requiring the lessee to implement the terms of the lease, and calling on him for an explanation as to this and also desiring to know the precise stage at which matters then stood. In the reply of the Range Officer which is Document 21 (dated 19-2-1963) the Range Officer blamed the higher officers, (which in the context obviously meant the Divisional Forest Officer) for failing to insist on the lessee supplying the stipulated quantity of kail and fir timber. He further stated that “this overlooking the obligations of the lessee” all happened prior to his posting and, therefore, he was not responsible.” But these Documents 30, 20 and 21 do not give us any idea as to whether any further stuff was dumped at the stores or not and as to who exactly was responsible for this not being done. Next we have a document which is a letter from the Divisional Forest Officer Kashmir to the Conservator of Forests, South Circle, dated 18th May, 1963 (Document 35) in connection with the next extension of the lease in which this passage occurs:

“The third point pertains to the Sale Depot, the contractor had to run at Pahalgam as per terms of the contract..... Regarding this I may mention that no account whatsoever has been intimated at the Range level about the sales made from the Depot after 1960 (up to which time proper records were maintained) the total take off as is apparent from the records of this Division is 8,333 cft. kail and 3912.52 cft. fir in all supplied from the depot by the lessee. What has been the sale after this is not available which shall have to be properly traced out and scrutinised. The supplies to the Tunnel Project have however been made in excess by 4,000 cft. or so.”

This is the last Document in the files, in which during the relevant time there is any reference to the non-supply of kail and fir, to the depot at Pahalgam. If the contents of this letter be accepted as reflecting the state of the files, it would appear as if the officers themselves were doubtful whether any further quantity was brought to the depot but not entered in the accounts. In the face of Document 35 I cannot hold that the

Government have established their case that there has been a failure on the part of the lessee to fulfil the terms of his contract. But even if the Government are right in their contention that there has been a default on the part of the lessee and that he had supplied no more than what is disclosed by Document 40 already referred to, there is nothing on the files to raise any imputation against the respondent or to connect him with any attempt on the part of the Forest Department officials to condone the non-fulfilment of the contract on the part of the lessee.

17.47. I have already pointed out that the sale of timber from the depot to the lessee is treated as if it was improper and on the basis of this impropriety the respondent is attempted to be charged with misconduct (vide statement of case paragraph 22(iii) supra. I do not see any basis for the suggestion that the purchase by the lessee of timber from the forest depot was anything improper. It was not suggested that the timber was stored for any purpose other than for sale to the public. If it was so, there was nothing wrong in the lessee purchasing from the depot. There is nothing in the agreement of sale prohibiting him from making these purchases, nor was it suggested that the price charged for the sale to him was unduly low or below that for which it ought to have been sold. It is in this context that I fail to appreciate the point sought to be made by the statement which learned counsel for the Government have filed showing the details of the transport of timber from Pahalgam for the work which Abdul Ghani Bhat was doing for Bakshi Bashir Ahmed by way of construction of his buildings. There was no dispute that the timber was his and in the circumstances I do not see the relevance or significance of the statement filed by Government with reference to this charge. The result, therefore, is that I hold that the Government have not established any part of the charge which they have formulated in their statement of the case as regards Allegation 14(c) and I find accordingly.

18.1. The other Allegation 15 reads :—

“(a) M/s Northern India Tiles Corporation, who were supplying tiles for the Srinagar Secretariat Building, supplied tiles as follows for buildings in which Bakshi Ghulam Mohammad had an interest :—

- (i) 1600 in August 1961 for flooring of the Fair Deal Motor Workshop at Srinagar belonging to his son.
- (ii) 3000 for the same purpose in August 1962 ; and
- (iii) 1,500 in February 1962 for the house of Bakshi Ghulam Mohammad's son and daughter at Pahalgam.

The total cost of the above supplies was Rs. 10,365.26 P. which was not paid to the firm.

- (b) Bakshi Ghulam Mohammad in his capacity as Chairman of the Board of Governors of the Regional Engineering College, Srinagar in the year 1963, gave a contract for

the supply of Nitco tiles to the above mentioned firm for the College Hostel against the rules or procedure in regard to the grant of such a contract, namely :—

- (i) no tenders were invited ; and
- (ii) the flooring provided in the approved plan and schedule of work for the Hostel and passed by the Government of India was for cement flooring at a cost of Rs. 1 lac as against over Rs. 2 lacs involved in Nitco tiles.

18.2. It would be seen that the gravamen of the charge here consists of two parts each distinct and separate from the other. The first part which I shall take up first, consists of three sub-items included in clause (a) and it speaks of the supply by the Northern India Tiles Corporation—(which for shortness will hereafter be referred to as Nitcos)—of flooring tiles on three occasions for use in certain buildings for which no payment was made. The first two supplies are stated to have been made to Fairdeal Motors, Srinagar, which, in and after 1961, was a concern in which first Bashir Ahmed alone and later on he and Shama Mir—the son and daughter of the respondent—were the principal if not the only partners, and the third supply for use in a house in Pahalgam known popularly as the Prime Minister's House of which also the respondent's son and daughter were the legal owners. The reference in the opening part of clause (a) to these buildings as these in which the respondent had an interest has to be understood in the sense that they belonged to his son and daughter and that is how it was put to me during the arguments.

18.3. In view of the nature of the allegation, notice was issued under Rule 6(1)(a) to Bashir Ahmed and his sister in regard to the charge and so far as what one might call the facts of the case, it is their reply that I propose to consider in that behalf. That the tiles as stated in the three sub-items of Allegation 15(a) were supplied by Nitcos for use in the buildings named, is really not in dispute, nor is there any dispute regarding (a) that their price has not been paid to Nitcos and (b) that the proprietors of the buildings in which they were used, were the son and daughter of the respondent.

18.4. The real controversy to be resolved in respect of this charge relates to (a) whether the tiles were intended by Nitcos to be a present to the respondent's son, and (b) whether the fact that gift was made was known to the respondent so as to lead to an inference of an improper benefit accruing to him and his close relations.

18.5. To answer these questions, it is necessary to set out the background of Nitcos' relations with the Government and with Bashir, in order to appreciate the points made by Government.

18.6. Nitcos are a firm at Delhi engaged in the manufacture of flooring tiles. Their business consisted in the sale of these tiles and they

also undertook their laying. The firm consisted of two partners, Wisvanath Talwar and P. N. Talwar. These two were also running another business of Construction Engineers and Contractors under the name of the Asian Building Corporation called for shortness A.B.C.

18.7. Both these concerns held contracts with the State Government. The first contract with Nitcos appears, so far as the files go, to have been in connection with the flooring of the Pahalgam Club building—the construction of which commenced in August 1960—on the verbal orders of the respondent which was confirmed by the Superintending Engineer (see file SY/P.C.T. 69 Extn of Pahalgam Club p. 82). This work was completed by October, 1961 and a sum of Rs. 24,000/- was paid for the tiles supplied by 1961, and the balance of over Rs. 15,000/- was paid by March, 1962. Almost contemporaneously with this work, the Nitcos were engaged by Bashir Ahmed to supply him with tiles and do their laying for his Jammu house. Bashir Ahmed had been allotted in early 1961 a plot of land at Gandhinagar in Jammu—the propriety of which allotment is challenged in Allegation 12. Soon after he took possession of the land, he started to construct a residential house thereon and Nitcos were chosen for doing the flooring and this work is said to have been completed early in 1962, and it is said that the entire amount of the bill has been paid.

18.8 At or about the time when they were working at Jammu Nitcos were asked to supply tiles and also do their laying at the Tourist Centre at Pahalgam. The old Tourist Centre had been burnt down by fire in the first week of December, 1960, and steps were taken immediately to have a new building constructed. The contract for the construction of the building was given by the Chief Engineer on 30th June 1961 to Abdul Gani Bhat, who figures in Allegation 14 and the work was started in compliance with the verbal orders of the respondent even before the administrative approval of Government was received (Page 19 File T.34 cf. Divisional Engineer Anantnag). The files do not show at what stage the estimate for flooring which was originally, as per the tender-specification of “ $\frac{1}{2}$ ” thick cement concrete laid over 4” lime concrete” (vide pages 1-8 File *ibid*) was changed into “Nitco tiles”. However we find that months before 7th May, 1962 on which date the administrative approval of the Government for the construction of this work for Rs. 2.67 lakhs was obtained and the plan approved made provision only for cement flooring, the specification in regard to the type of flooring, had been altered and Nitco tiles started moving. (see Nitcos bill No. 1805 dated 15th February, 1962 for Rs. 7305.54 for supply of tiles).

18.9. At about this time the contract for the construction of the Secretariat Building at Srinagar was given to the Asian Building Corporation, while the flooring work including the supply of tiles was entrusted to Nitcos. The work of laying the floor started in or about July 1962 and was completed in May, 1963. Besides, tiles were supplied and laid by Nitcos at the Dak Bungalow at Achabal in June, 1962, the amount involved in this last contract being about Rs. 5,000/-.

18.10. The point why I am mentioning all these works and their details is to emphasize the fact that the respondent took a very personal interest in the Government constructions and as shown by the files, it was as a result of his verbal orders that even before formal sanction of Government was obtained that the works were proceeded with. Besides though the files do not disclose in the case of either the Pahalgam Club or the Tourist Reception Centre at Pahalgam any formal order of Government sanctioning the mosaic tile flooring, these were done, again as shown by the file relating to the club, "according to the colour and design" approved by the respondent (vide page 95 file 5Y/P.C.T. 69 Extn. of Pahalgam Club).

18.11. It was precisely at the time these works were being carried out by the Nitcos for the Government that they supplied the tiles to the respondent's son as set out in Allegation 15(a). There are certain features in relation to these supplies to which it is now necessary to refer. The first supply was of 1600 tiles for being utilised in Fair Deal Motors at Srinagar. Apparently at the time the supply was made, it was not intended to be a gift, for we find that a bill for Rs. 1044.05 being the price of these tiles "as per delivery order" dated 23rd September, 1961 was forwarded to Messrs Fairdeal Motors (see Document 1). The books of Nitcos show a debit against Fairdeal for the amount, but it is now admitted that this claim was not pursued—no reminders being sent nor oral requests not to speak of written demand for payment made.

18.12. The next supply was of 3000 tiles which were supplied not on one day but represent the total of supplies made over a period extending from 2nd July, 1962 to 11th July, 1962. This is made out from Documents 2 and 3 which are two letters from the Accountant of Nitcos at Delhi to Sardar Hukam Singh an employee of A.B.C. at Srinagar. After stating in Document 2 that "junior partner" (Shri P. N. Talwar) had directed him to write the letter, he said—

"Rashid Mistri....requires....one bag of yellow mixture for Bashir's work which also is in your stores....Besides this Mr. Bashir probably requires 3000 yellow coloured No. 23A tiles. Such material has been sent from this place to Secretariat Building. You can make a total of 3000 tiles or any number he requires by giving these and tiles of any other colour. *You should advise Mr. Bashir to make a demand directly from the D. E. so that we have not got to give it.* (The Divisional Engineer JK Government was supervising the construction of the Secretariat building). If he gets it from the D.E. these will be debited to their account and the D.E. cannot also refuse them. *This should be done very cautiously so that we do not suffer any loss and the job is also done.*" (underlining mine).

Document 3 which followed bears date 11th July, 1962. This repeated the direction about the need to deliver the tiles required by Bashir and stated that the other partner of Nitcos Mr. Wisvanath Talwar had desired

these to be delivered. Besides it added—

“If Mr. Bashir, according to our earlier instructions, requires tiles of any other colour, the same may be given out of this lot.”

This letter was as seen from later correspondence delivered by one Mr. Dutta personally at Srinagar. These letters were seized by the police from the office of Nitcos at Delhi and their genuineness is not disputed. It is also admitted that in pursuance of these directions 3000 tiles were delivered for use in Fairdeal Building belonging to Bashir Ahmed.

18.13. It would be seen that in Document 2 the junior partner P. N. Talwar had suggested that the tiles might, if possible, be got from the D.E. Srinagar so that in effect the Government might be made to bear their cost. Evidently this was not found possible and then we have in Document 4 dated 13th September, 1962 a suggestion made that the cost of these tiles might be billed to the D. E. Pahalgam, making it appear as if they had been supplied for the Tourist Reception Centre work. Document 4 is a letter between the two partners from Wisvanath to Pran Nath and in this he set out the items of tiles supplied and the work done at the Tourist Centre, Pahalgam, and the amounts received in respect of their several bills. Of these three are of relevance for the present purpose.

18.14. The first is as regards the 3000 tiles supplied to Bashir Ahmed. As regards this he says that they had been supplied at Srinagar as per the verbal orders of Mr. Salam (the Divisional Engineer Anantnag who was in charge of the Tourist Centre work at Pahalgam). Their cost is calculated and to that is added cartage from Delhi to Pahalgam (admittedly to make it appear as if the tiles were delivered at Pahalgam) and a total of Rs. 4479.16 is arrived and it is said that this amount should be added to the amount of Rs. 14576.97 which represented the value of other items of goods supplied for use at the Tourist Centre. The need for this claim for Rs. 4479.16 to be added to the amounts due from the D.E. Anantnag is also repeated at the end of the letter. Evidently Mr. Wisvanath had second thoughts, for before despatching of the letter he added a note on the margin by the side of the portion of the letter referring to the cost of these tiles being billed to the D.E. Anantnag—“This you may not insist as the payment has to be recovered from A.B.C.” The bills which were presented to the D. E. Anantnag have been examined by me and this claim for Rs. 4479.16 is not included in any of them. But it is not clear as to how the claim was realised from A.B.C. who were the construction contractors for the Secretariat building. After examining the bills presented by Nitcos in respect of the Secretariat work, learned counsel for the Government stated that though it was intended at one time to charge this to the Government they could not maintain that the value of these tiles had actually been recovered from Government.

18.15. There is no debit in Nitcos books against Bashir Ahmed as regards the cost of these tiles and admittedly no bill was sent to him for the value. Nitcos, therefore, clearly intended the tiles to be a gift to Bashir, in the event of their not being able to some how get their cost

from the Government. Not merely this, but Nitcos did the work of laying these tiles at Fairdeal Motors and on 31st August 1962 they sent to the firm a bill for Rs. 1874.07 (Document 6) for their labour—having entered a debit therefor in their books. But the firm has not received any amount up to now, and it was admitted by Nitcos before me in circumstances to be related later, that it was never their intention to recover the sum from Bashir. This completes the case as regards the first two sub-items of Allegation 15(a).

18.16. The impropriety involved in the case of the third item of 1500 tiles supplied for use in Bashir's house at Noonawan, near Pahalgam, is of a more serious nature, for in that case, it is clearly established that the value of these tiles had been billed for and recovered from the Government and therefore would broadly speaking be a misappropriation of Government property.

18.17. Four thousand and eight hundred tiles were sent in two trucks from Delhi to Pahalgam on the 13th February, 1962 (vide Document 7), being consigned to the Divisional Engineer, P.W.D. Pahalgam (Documents 8 and 9). Simultaneously with this despatch, one Brij Mohan, an employee of Nitcos at Delhi wrote a letter to Pirthi Singh, their man at Pahalgam (Document 10 dated 13th February, 1962). In this he said,

“Out of these two trucks, 1,500 tiles may be unloaded at Bakshi Sahib's bungalow at Pahalgam and intimate Mr. Abdul Gani Bhat contractor about these 1500 tiles, that we unloaded the above-mentioned goods at Bakshi Sahib's bungalow and that he should take care of the same”:

(Abdul Gani Bhat was the contractor employed for the construction of the Noonawan house vide Allegation 14). Brij Mohan followed this by another letter dated 16th February, 1962 (Document 11) in which even more detailed instructions as to how the 1500 tiles were to be delivered to Bashir Ahmed were given. He said:

“Out of the two truck loads about which a letter has been written (Document 10) 1500 tiles will be used at Bakshi Sahib's bungalow at Pahalgam. The truck driver should carry both the truck loads to P.W.D. Overseer Pahalgam *and get a receipt for the whole lot from him.* After that they should keep 1500 tiles in the truck and unload the rest in the tourist Centre. . . . Abdul Ghani Bhat contractor should be informed about the same and deliver the goods. You must act according to this letter and return to us at Delhi the receipt obtained by the drivers *along with this letter.* You have to *instruct the drivers verbally accordingly.*” (underlining mine).

The direction to send this letter back to Delhi was repeated at the end.

18.18. Prithipal Singh acted according to these instructions and

wrote back on 28th February, 1962 (Document 12) saying—

‘I shall prepare a fresh acknowledgement at Srinagar, take it with me and get receipt for 4800 tiles from the Overseer. The letter sent by you... is being returned to you. I shall send you a receipt for the goods absolutely according to your instructions in a few days.’

18.19. On 15th February, 1962 Nitcos prepared a bill (Document 13) for the supply of the entire number of 4800 tiles, as well as for cement and certain other materials totalling Rs. 7305.54 and forwarded it to the Divisional Engineer Anantnag with a covering letter (Document 14) by which payment was requested. This bill (No. 1805 dated 15th February, 1962) which with two others totalled Rs.12,644.42 was accepted by the Divisional Engineer and was paid in most part on 29th March, 1962 when a cheque was passed for Rs. 11,900. The balance remaining after this payment was about Rs. 900 only which was paid later.

18.20. That out of the 4800 tiles covered by Bill No.1805, 1500 were delivered for the use of Bashir's house, was not disputed by Nitcos, and indeed is not disputed by Bashir Ahmed either, though each has put forward his own version as to the transaction to which I shall immediately proceed.

18.21. It will be convenient to take up first the defence of Bashir Ahmed which is a common one for all the three items. In regard to the first item of 1600 tiles, while not disputing that the tiles were supplied for use in the Fairdeal Motors building he says that the bill for their value had been wrongly sent to Fairdeals, as that firm had placed no order for the tiles and that therefore he handed over the bill to his contractor Abdul Ghani Bhat for meeting it, since he had made a lump sum contract with the contractor under which he had to pay and had paid Rs.10,000/- for the entire work in connection with the tiles and the flooring work at Fairdeals Srinagar and at Pahalgam. I consider both these statements—(a) that he instructed that no bill should be sent to him ; and (b) the lumpsum contract with Abdul Ghani Bhat and the payment of Rs.10,000/- to him are false. If he had given instructions as stated by him, when the bill for Rs. 1044.05 was received on or about 18th October, 1961, it was not possible to account for the bill for the laying charges of the 3000 tiles which was again forwarded to him in August, 1962, nor a similar bill for the laying charges at the Pahalgam house, which was despatched on 31st August, 1962. Nor is there any communication either from him or from Abdul Ghani Bhat to the Nitcos as regards the name in which they should prepare the bills. He has no case different from that I have just set out as regards the 3000 and the 1500 tiles viz. that if tiles were got it was a matter entirely between Abdul Ghani Bhat and Nitcos. But neither the account books of Nitcos nor their bills contain the name of Abdul Ghani Bhat and I, therefore, discard this story as false.

18.22. We next come to the case of the lumpsum contract and his claim that he had paid Rs. 10,000/- this payment being said to

have been made on 15th April, 1963. In support of this payment reliance is placed on certain letters which refer to it and these have been annexed to his reply. The first of them is one purporting to be from Abdul Ghani Bhat addressed to Bashir Ahmed dated 16th June, 1963, in which after acknowledging receipt of the Rs.10,000/- on 15th April, 1963, he admits that he had not yet paid the sum due to Nitcos because there was some dispute as regards the quality of the tiles. The next letter annexed to the reply is one bearing dated 20th June, 1963 from Bashir Ahmed to Wisvanath Talwar of Nitcos in which after disclaiming any personal liability for the price for the tiles supplied or for the laying charges, states that he had put funds in the hands of Abdul Ghani Bhat to whom Nitcos should look to for payment as Abdul Ghani alone had ordered the work. Lastly, he has produced a letter bearing the date 27th July, 1963 from Wisvanath Talwar addressed to him, in which while asserting that the tiles were supplied on the verbal orders of the Divisional Engineer (Mr. Salam) he admitted that they were supplied without any formal order from him. Mr. Salam is recited as having stated that Abdul Ghani Bhat would pay for them and that the Department had nothing to do with it, also that Abdul Ghani Bhat had admitted having received the amount from Bashir Ahmed and that he was looking forward to a joint inspection of the work to finalise the bill. I am entirely satisfied that these three letters have been brought into existence with spurious dates merely to support the defence now set up by Bashir.

18.23. The truth of the letters as well as the main brunt of the defence rests on the acceptance of the story that Bashir Ahmed had paid Rs.10,000 to Abdul Ghani Bhat for the flooring work either as a lumpsum payment or even otherwise and that the contractor had not passed on the sum to Nitcos by reason of some dispute as regards the quality etc. of the work done. Of course, if this lumpsum contract and the payment under it were true, it would establish (1) that Nitcos were not expected to and did not intend to supply the tiles free or lay them free of cost, (2) that as a matter of fact, so far as Bashir Ahmed was concerned he had made the payment and if the contractor did not pass on the amount to Nitcos, Bashir Ahmed was not to blame. I have already set out the purport of the correspondence now produced in support of this story regarding this payment of Rs.10,000/- on 15th April, 1963 receipt of which is acknowledged by Abdul Ghani in his letter now filed.

18.24. Learned counsel for the Government urged that Bhashir Ahmed had capitalised on and built this entire story of the payment of Rs. 10,000/- on a misreading by the Government of an entry in the diary of Abdul Ghani Bhat, the original of which has been filed in support of the Government case. The extracts from the diaries has been filed as Document 11 in Allegation 14. In diary No. 392 (item 415) on date 15th April, 1963, there is an entry of a receipt by Abdul Ghani of Rs. 10,000/-. The person from whom this amount is stated to have been received is Sheikh Mohd. Akram. In the English translation of the entry filed by the Government, however, the Urdu script was mis-read and was translated as "Received from the Prime Minister" I have had the original read by my staff who are well-versed in Urdu script, and

I am assured that the name is Shiekh Mohd. Akram and that the transliteration or rather translation as "Prime Minister" is incorrect. On the strength of this mistaken reading by the Government, which was contained in the translation which they filed, Bashir Ahmed has rested his case of a payment of Rs. 10,000/- by him to the contractor on 15th April, 1963. When, however, one turns to the ledger of Fairdeal Motors (page 27), it is found that on 11th March, 1963, a cheque for Rs. 31,000/- was given to Abdul Ghani Bhat "on account" and that later on 15th April, 1963 he refunded to Bashir Ahmed out of this a sum of Rs. 10,000/-. There are corresponding entries in the diaries of Abdul Ghani Bhat. There is in the diary an entry on 11th March, 1963 reading "from Bashir Ahmed Sahib Bakshi by cheque in name of Ghulam Rasul—Rs. 31,000/- and on 15th April, 1963 the entry is "cash returned to Bashir Ahmed Sahib—Rs. 10,000/-". There is no entry regarding this payment on 15th April, 1963 to Abdul Ghani either in the ledger of Fairdeal Motors, or in the diaries and ledgers regularly maintained by Abdul Ghani for the work done by him for Bashir and Fairdeal. On the other hand, there is a payment to Bashir by Abdul Ghani Bhat of Rs. 10,000/- on 15th April, 1963 this being a return in part of a sum paid "on account" on 11-3-1963. For this reason that I am satisfied that this story of payment of Rs. 10,000 on 15th April, 1963 for the tile work is false and is invented for the purpose of a defence. I might mention that the entries in the diaries relating to debits and credits regarding work for Fairdeal and the ledger kept by Abdul Ghani Bhat for the said work has been checked with the ledger of Fairdeal Motors and has been found completely to tally both as to the dates as well as to the amounts. If the payment of Rs. 10,000 by Bashir Ahmed to Abdul Ghani Bhat was false, it follows that the letter of Abdul Ghani acknowledging the receipt of the said sum must be one got for the purpose of this enquiry. A similar conclusion was also inevitable in the case of Bashir Ahmed's letter to one of the partners of Nitcos purporting to bear the date 20-6-63. That letter could not have come into existence before the Government filed the documents in Allegation 14 which was sometime in 1965, and as the letter of Wisvanath Talwar refers to the letter of Bashir Ahmed that also is a letter with a spurious date. I shall have occasion to show later that Nitcos themselves completely gave up the story which is found in this letter as untrue.

18.25. It thus became clear that *prima facie* there was evidence to show that Nitcos had made a gift of the tiles and the labour charges in respect of these referred to in sub-items (i) and (ii) had besides been parties to surreptitiously pass on Government property to Bashir Ahmed in regard to sub-item (iii). In view of these features of the case, I considered that it was necessary to enquire into the conduct of the firm of Nitcos and besides that as their reputation was likely to be prejudicially affected by the inquiry and the findings recorded therein, they should under Section 10(1) of the Inquiry Act be afforded an opportunity of being heard with reference to Allegation 15(a). A notice was accordingly issued in response to which the firm appeared through counsel and the learned counsel for the Government made in the presence of counsel for the firm his submissions as regards the substance of the charge, and they were furnished with copies of all the documents and affidavits on which Government relied. They thereafter appeared before me on 9th

November, 1966 through their counsel Mr. C. Rai, and filed a statement explaining their position. At this hearing the line adopted by the firm was (1) in regard to items (i) and (ii) that the tiles were the property of the contractor and that as the Government paid for the work at Srinagar only on the basis of the floor area covered, they had not been billed for or made to pay for the 1600 and 3000 tiles supplied to Bashir Ahmed. (2) That as regards item (iii) they were supplied on the instructions of the Divisional Engineer, who said that it was for the official residence of the Prime Minister. (3) The firm had in 1960-61 done work for Bashir at his house at Jammu and had been paid over Rs. 13,000/-. Consequently they had faith in him and he was creditworthy, and so they did not demand payment for the tiles or for laying charges covered by items (i) and (ii) though they intended to recover the sum in due course. Attention of counsel was, however, drawn to the absence of entries in the firm's accounts as regards the 3000 tiles and as regards the 1500 tiles referred to in item (iii), the measures taken to ensure secrecy, the nature of the instructions given to their Pahalgam staff as to the manner in which the tiles were to be delivered and other attendant circumstances which were inconsistent with their case. Learned counsel appreciating the force of my observations stated that he would consider the entire position and appear before me again. The proceedings were then adjourned to 23rd November, 1966, when Mr. Rai again appeared with Mr. Wisvanath Talwar.

18-26. Dealing first with item (iii) he filed a statement containing elaborate calculations of the floor space in an attempt to establish that the 1500 tiles supplied at Pahalgam and taken out of the stock for which Government had paid, had been replaced later. Learned counsel, however, frankly conceded that this theory of replacement depended on the acceptance of the percentage of breakage involved in the laying. Besides it also admittedly depended on the fact that a consignment of 8200 tiles stated to have been despatched between 17th May, 1962 to 29th May, 1962 from Delhi to Pahalgam had arrived at Pahalgam and which not having been accepted and paid for by the Divisional Engineer was available for this replacement. It is true that a bill for this lot of 8200 tiles was forwarded to the Divisional Engineer on 29th May, 1962, but the same is found to have been refused to be paid for the reason "that the tiles were not in stock". If the words "not in stock" were given their ordinary meaning--and these were the words used by the partner Wisvanath in Document 4 already referred to explain the reason why the bill for the price of the 8200 tiles had been refused payment by the Divisional Engineer, it was admitted that this would negative the theory that the tiles arrived at Pahalgam and were available there. Mr. Rai, however, submitted that the reason assigned for refusing to pay was either incorrect, or had been ineptly expressed, but that in fact the tiles were at Pahalgam and that out of this lot of 8200 tiles which remained with the firm at Pahalgam, the 1500 tiles had been replaced and that it was after the replacement that the final bill of the firm was paid. I do not see any ambiguity in the words used in stating the reasons for the rejection of this bill. In Document 4 Wisvanath partner of Nitcos says that the refusal to pay for the 8200 tiles was on the ground that they were missing from the Tourist Centre. I do not find any demand being made for this lot of tiles. Besides it does not appear that Nitcos had

any store or depot at Pahalgam, and therefore it looks as if the tiles might have been taken to Srinagar for use there. If the story as regards the availability of this 8200 tiles were rejected, Mr. Rai conceded that the story of replacement must also fall to the ground.

18.27. In support of this case of replacement, however, learned counsel relied strongly on paragraphs 11 and 13 of the affidavit of Abdul Salam, Divisional Engineer, filed on behalf of the Government. In the earlier paragraph he had stated, "That as the 1500 tiles had already been delivered at Bakshi Ghulam Mohd.'s residence, I also consented to acknowledge the whole lot of 4800 numbers of tiles with the understanding that the firm will make this deficiency good later" and in the latter— "I paid him only for the actual work done by the firm in the Tourist Centre building at Pahalgam according to actual measurement."

18.28. I am unable to accept the defence that 1500 tiles were replaced. In the first place Mr. Salam, the Divisional Engineer, does not categorically say they were replaced, and I might add that I would not have been prepared to believe him even if he had said so in the face of their being no tiles available for replacement. This officer, who I understand is still in service, had on his own admission passed for payment by Government of the bill No. 1805 dated 15th February, 1962 for the 4800 tiles even though he knew that 1500 of them had been delivered at Bashir's place. This payment had been made on 29th March, 1962, and according to him, it had been made on the assurance of replacement which had not been carried out up to the latter date. I could not naturally place any reliance on his statements. Again the final bill is only for the laying charges, the tiles having been paid for separately, so that there is no question of the value of these tiles having got adjusted when the final bill was paid.

18.29. Learned counsel Mr. Rai analogously urged that as the charge against his client was in the nature of a crime, it was for the Government to positively prove that there was no replacement of these tiles. I do not agree that I am trying a criminal charge, and therefore the quantum of proof suggested has no relevance, but I must say that with all the documents in relation to the stocks at each point of their work in their hands, it would have been possible for the firm to establish their case, if their story of replacement were true. Besides, I must add that the version learned counsel submitted at the hearing on 9th November, 1966, that the supply was made because the firm were told that the building of Bashir Ahmed at Pahalgam was the official residence of the Prime Minister is wholly inconsistent with the theory that they were called on to replace them at the Tourist Centre and that they did so.

18.30. If the tiles were not replaced, as I find they were not, it would follow that Bashir Ahmed has benefited at the expense of the Government who paid for these tiles.

18.31. This apart, even assuming that the tiles were replaced, the fact remains that a present was made to Bashir Ahmed of the laying charges and of the tiles, the position regarding item (iii) would be similar to that of items (i) and (ii). It was this aspect on which I particularly

desired Mr. Rai to address me on the 23rd November. In variation of the position taken up by him on the 9th November, learned counsel abandoned the case that these 1600 and 3000 tiles and their laying charges were intended to be paid for, and frankly, conceded before me that on the other hand the tiles and laying charges were intended to be a present to Bashir Ahmed, that it was, as he put it a case of "due" and not "undue" favour shown to him, in order that his father, viz. the respondent might be sympathetic towards the firm in the matter of the contracts which they were fulfilling for the Government at the Secretariat and elsewhere. He added that his clients were businessmen, and so they considered that this would help them to work "smoothly" in their dealings with the Government. I cannot, however, agree that the favour shown was "due" or was proper even from a businessman's point of view. I should add that neither the respondent nor Bashir Ahmed cared to appear to put any questions to the Nitcos partner who was present before me and on whose instructions his counsel Mr. Rai, made the submissions I have referred to.

18.32. Apart, therefore, from the documentary evidence placed before me by Government, it has now been proved to the hilt by the admission of Nitcos, that undue favour was shown to Bashir Ahmed in the matter of the three items set out in Allegation 15(a), the total value of which comes to Rs. 10,365.26 as per the books of Nitcos. So far as the firm itself was concerned, this favour was admittedly for and could only have been for the purpose of being in the good books of the respondent—in his capacity as the Prime Minister.

18.33. But this by itself is not sufficient to hold the charge proved against the respondent because the question has yet to be considered as to whether the official position of the respondent was exploited with his consent, knowledge and connivance, since it was not suggested that those supplies etc. were made on his direction or at his instance.

18.34. The respondent in his reply states that—

- (1) he had no knowledge of the bill for the tiles covered by Allegation 15(a)(1) or that the other items were not paid for ;
- (2) he showed no favours to the firm, so that there was no question of their showing him or his son or relations any favours ; and
- (3) the real state of affairs regarding the tiles etc. had been explained by his son in his reply, which he adopted.

Taking up the last of the points first, I have already considered and discussed the reply of Bashir Ahmed and have given reasons why I am unable to accept the same. In view of this, the "real state of affairs" must be held to be that the tiles were supplied and service rendered without any intention on the one side to demand payment, and on the other to make payment.

18.35. The second point urged was that he showed no favours to Nitco and so they were not likely to show his son any undue favour. There might be two answers to this : (a) If the statement of Nitcos at the hearing on 23rd November, 1966 be taken as correct, they made this present in order to be on the right side of the respondent, and in order not to have trouble from him, in performing the contracts they had undertaken. (b) I have already made extracts from the File T.34 of the Divisional Engineer Anantnag from which it is seen that the construction of the Tourist Centre at Pahalgam was commenced in advance of formal Government sanction on the verbal orders of the Prime Minister, and that though the original specification provided only for cement flooring and the administrative sanction dated 7th May, 1962 covered that alone, tiles were supplied as early as February 1962 for the mosaic flooring. Nitcos who had done work at Bashir's house at Gandhinagar at Jammu, had been entrusted with every work by Government where flooring tiles work was involved. I am far from saying that this is "undue favour", shown to the firm, as they might have been selected for their competency and efficiency, but these contracts did mean profit to the firm, and so their selection was a matter of advantage to them.

18.36. The point that remains is, regarding the respondent being unaware of the supply etc. of the tiles or of the bills and of whether the bills were paid or not. It is to this aspect that learned counsel for Government devoted most attention with a view to pointing out that though there was no direct proof that the respondent knew (a) that the tiles were supplied or laid, and (b) that these were not paid for, the irresistible inference from admitted facts was that he must have been aware. As regards this, the case as regards the supply to Fairdeal Motors at Srinagar stands on a different footing from that to the work at the Pahalgam house.

18.37. As regards the supply of 1600 and 3000 tiles covered by items (i) and (ii) to Fairdeal Motors and the laying of them there, Mr. Khanna urged that the respondent had taken great interest in Bashir Ahmed and in his business of Fairdeal Motors which he started as sole proprietor on and from 1st January, 1961, that the respondent was present at the foundation laying ceremony of the building on 11th January, 1961 in order to bless the venture, and had made a token contribution of Rs. 111 with his blessings to his son's firm on that occasion. The sum of Rs. 111 was evidently handed to the respondent by contractor Abdul Ghani Bhat (vide entry item 77 at page 4 of Document 11 in Allegation 14—being extracts from the diaries of Abdul Ghani Bhat) who paid it to Bashir and is found entered at page 1 of Ledger of Fairdeals for 1961. But the tiles were not there then, for what I have to be satisfied about is as regards the respondent's presence in the premises when the tiles were being laid or after that point of time. It was, however, said that there were statements in the affidavits filed on behalf of Government which showed that the respondent was frequently visiting the Fairdeal building when under construction, that if he went there he should have seen that the flooring had the same kind and design of tiles as at the Secretariat which Nitcos were doing—the design and shades of all tiles in these buildings having been selected by the respondent—this would have put him on notice as to how the same type of flooring

came to be used, and on enquiry he would have learnt that Nitcos had supplied the tiles and that they had not been paid for. That the respondent was present at the Fairdeal building on 11th January, 1961 when the foundation stone was laid is proved by documentary evidence, but his presence there later rests wholly on statements in affidavits on which I am unable to act in the absence of the deponents being called for examination. If then there is no evidence of the respondent having been to the Fairdeal Motors building either at the time of the flooring or later, the suggestions and inferences made on the basis of which knowledge is attributed to him, must be rejected. I must, therefore, hold that it is not established that the respondent had knowledge of the undue favour shown by Nitcos to Bashir Ahmed regarding items (i) and (ii).

18.38. The case as regards the Pahalgam house stands on a different footing. The respondent admits his presence at the Pahalgam house at the relevant time (vide paragraph 18) of the respondent's reply to Allegation 6). In the summer of 1962, he admits he was there, and it was at that time that the Prime Minister of India, Pandit Jawaharlal Nehru spent two weeks there. Abdul Ghani Bhat was the contractor in charge, and the tiles having been delivered there in February 1962, were laid sometime later and we have Nitcos' bill for laying dated 31st August, 1962. We have entries in the diary of Abdul Ghani Bhat—items 321 dated 30th May, 1962, 323 dated 11th June, 1962, 324 dated 16th June, 1962, 329 dated 2nd July, 1962, 330 dated 3rd July, 1962, 341 dated 12th August, 1962 (vide document 11 in Allegation 14) which prove the presence of the respondent at the house at Pahalgam during the relevant time. The colour and design of the tiles used at the Pahalgam house were identical with that in the Tourist Reception Centre—Design No. 23A and as the respondent is seen from the documents to have taken a hand in selecting these, he must, therefore, have known that these came from the same stock as that from which the Tourist Centre was supplied. We have next the fact that these tiles were with the knowledge of the Engineering officials in charge of the work at the Tourist Reception Centre diverted to this building though they were paid for by the Government. These officers would not, and even as learned counsel put it, dare not have done this unless they were certain that they would not be taken to task for thus playing with the public property. They could have this certainty only if they knew that the respondent being aware of it would protect them, as it cannot be suggested that Bashir Ahmed by himself could have afforded them the protection needed. In this state of facts, I consider the suggestion well-founded that the respondent knew that Nitcos supplied these tiles, and as he himself was occupying the house, I am also prepared to accept the submission that he knew the circumstances in which the supply was made *viz.* that they were not to be paid for, as the payment for them had already been made by Government.

18.39. The result, therefore, is that while I hold that undue favour has been shown by Nitcos to Bakshi Bashir Ahmed by supplying him free all the three items listed in Allegation 15(a), the respondent is proved to have knowledge only of the last item, *viz.* the 1500 tiles and the

cost of their laying covered by their bill for Rs. 696.76 (vide Document 15). As a result of the exploitation of the respondent's position with his knowledge or consent, my finding is that his son obtained pecuniary advantage to the extent of Rs. 1676.12 (Rs. 979.36 value of 1500 tiles + Rs. 696.76 laying charges)

18.40. I have next to take up the allegation contained in item 15(b). It purports to charge the respondent with showing undue favour to Nitcos in that he managed to give them the contract for flooring the Regional Engineering College hostel with their tiles, though such flooring was not in the originally approved plan. A mass of documents have been filed in order to establish (a) that the original estimates on the basis of which the construction of the Hostel was proceeding made provisions only for cement flooring, and (b) that the proposal for Nitco tile flooring, with the contract for laying the flooring being given to Nitcos was brought in at the instance of the respondent. It was not suggested that the rates which the Nitcos were permitted to charge for this work were different in any way from those at which they had been paid for their other work, e.g. at the Secretariat, but the charge was said to be that the work was given to them without tenders being called for, and that there was a departure from the original estimates involving heavy payments to the flooring contractor. If one read allegation 15(b) as notified, no connection is recited there as existing between the undue favour stated to have been shown to the respondent's son by Nitco which is the subject-matter of Allegation 15(a) and the favour to the Nitco in Allegation 15(b).

18.41. I, therefore, enquired of Mr. Khanna on what basis he could tack on the charge in Allegation 15(a) and argue that the one in Allegation 15(a) was in the nature of a *quid pro quo* for the former. His answer was that the notification had not been happily framed but that this had been brought out in the statement of case. He also relied on the note at the end of Schedule II as supporting him.

18.42. No doubt, the note at the end of Schedule II has to be read into every allegation, but this does not help the Government because, by the abuse of power alleged in 15(b) there was no exploitation of the respondent's position by any member of the family, or relation or other person. In fact here it is a case, if the charge is true, not of exploitation of him, but of his personal action to benefit a stranger.

18.43. No doubt in the statement of the case, it is said that because of the undue favour shown to Bashir Ahmed to the extent of Rs. 10,000 odd, the respondent "accommodated" Nitcos by giving them the Engineering College Hostel contract, but this is not warranted by the terms of the allegation as notified, which is what, strictly speaking, I am called on to enquire into.

18.44. There is one further and even more fundamental reason, why I consider that I should not enquire into the charge contained in 15(b). On the terms of the notification, I am desired to answer two questions and the 38 allegations listed in the Second Schedule are to be considered only for the purpose of answering the second question.

That question it may be recalled is as to the 'assets, pecuniary resources or advantages or other benefits' by the respondent, members of his family and relatives in parts A & B of Schedule I, by the abuse of his power or exploitation of his position with his knowledge" etc. As in the case of the allegation in 15(b) the pecuniary advantage, if any, accrued to Nitcos, that is not germane to the answer to question (2) to which alone the allegations in Schedule II are relevant, unless it was a *quid pro quo* to the charge in Allegation 15(a), and I have held that it cannot be so read. I, therefore, do not consider it necessary to consider the charge in 15(b) or record any finding thereon.

19.1. The last of the allegations in the second category is Allegation 32 which is concerned with a charge, that 'on the respondent's direction electrical wiring was provided for the house of Bakshi Bashir Ahmed at Cheshmashahi and for his own at Ishbar at Government cost contrary to the rules.

19.2. Rule 10 of the Electricity Rules, Svt. 1995 made under the Jammu and Kashmir Electricity Act 1991 and which continues to be in force by virtue of Section 56 of the present Electricity Act 1997 reads :

"The Department shall provide free of cost to a consumer service line not exceeding 100 feet in length from the nearest distribution line pole to the consumer's premises. The cost of service line required in excess of 100 feet either within or outside the consumer's premises shall be borne by the consumer himself."

The case of the Government is that this rule was violated and that in respect of two buildings, one belonging to the respondent and the other to his son Bakshi Bashir Ahmed, electric lines were extended at the cost of the State and that by reason thereof the respondent and his son benefited to the extent of Rs. 13,561 and the further allegation is that this extension of line and the debit of its cost to the State was effected by the abuse of the official position of the respondent. The allegation in respect of this charge is that numbered 32 which reads :

"In the year 1962, Bakshi Ghulam Mohammad by abusing his official position obtained pecuniary benefit for himself and his son to the extent of Rs. 13,561 inasmuch as he got electric lines, extended to his house at Ishbar and his daughter-in-law's house at Chashma Shahi and got expenditure debited to the grant of Electrical Department although, in fact, he and his daughter-in-law were required to pay this amount."

The sum of Rs. 13,561 referred to in the charge is the total of the cost incurred in the extension of lines to the two houses—Rs. 4,561 to the one belonging to the respondent himself at Ishbar and Rs. 9,000 to the other at Chashmashahi belonging to his son.

19.3. The extension in both cases was of a three-phase 4 wire line and there is no dispute that such a type of electric connection and wiring has been provided for both the houses, as also that the cost of such extension—the amount again not being in dispute—was borne by the Government. The points in controversy are —

- (1) Whether these extensions were effected at the time mentioned in the statement of the case and asserted by deponents of affidavits filed in support of the Government case or whether the connections were and this is the case of the respondent, part of a general scheme of extension of electric connections in the particular localities concerned, with the result that the benefit derived by the respondent in the one case and by his son in the other, were merely incidental to such a general scheme for which, therefore, there was no obligation upon them to pay and the cost was, therefore, rightly debited to Government.
- (2) Secondly, whether these extensions were carried out at the instance of or on the direction of the respondent and whether similarly the cost was directed to be borne by the Government by the respondent himself.

19.4. As the two buildings have to be considered separately, I shall first take up the extension of the line to the respondent's house at Ishbar. The case of the Government as regards the extension of the electric line to this building is to be found in paragraph 18 of the statement of the case where it reads :

"In the month of August 1963 Bakshi Ghulam Mohd.... sent for Shri Abdul Hamid, Executive Engineer, Maintenance Division Srinagar to his official residence at Srinagar and told him that three phase electric line be extended to his private house at Ishbar (Guptganga) Srinagar, which was under construction, and that this should be complied with immediately. He further told the Executive Engineer to debit the expenditure to the grants of the Electrical Department."

In support of this allegation what is before me are merely the affidavits of the Engineer and as he has not been called as a witness, I do not propose to take any notice of it. I shall proceed on the basis merely of the documents filed in support of the case and examine how far the case as set out is established.

19.5. Before, however, doing so, it is necessary and indeed it would be convenient to state the defence of the respondent in regard

to this part of the charge. The first point raised in the reply is that there was no house, nor even "a house under construction", at Ishbar in August 1963 and, therefore, the whole story of the respondent directing the Engineer to extend the line to the "house" is false. The whole of this defence is based upon the circumstance that the sale deed under which the respondent purchased the Ishbar property is dated 19th August, 1963 and according to the respondent if he purchased the house on the 19th August, 1963 there could have been no constructions in that month to justify an electrical connection there being laid. But the date of the sale deed by no means negatives the respondent having entered into possession of the property pending the execution of the document and the completion of the sale. The diary of Abdul Ghani Bhat (No. 393 dated 18-8-1963) shows that this contractor who was commissioned to build this house (vide Allegation 14) entered upon the property and started gathering materials therein as early as 18th August, 1963, the total value of the materials then purchased and store amounting to Rs. 1690. These materials are referred to as having been purchased for the "Shalimar" house of the Prime Minister. It is obvious that this is the house at Ishbar with which the allegation now under discussion is concerned. There are similar items entered in these diaries of expenditure incurred by the contractor in respect of labour charges, or for price of materials etc. on 20th, 21st and 23rd August, 1963. In this connection it might not be out of place to mention that the sale deed dated 19th August, 1963 was executed on behalf of the vendors Devindra and Virandra by their power of attorney agent Pran Nath Kapoor under a power dated 7th August, 1963 and registered with the Sub-Registrar on 8th August, 1963. This would show that as early as the beginning of August the negotiations had been concluded for effecting the purchase of this property. So far as the work in connection with the extension of electric lines are concerned, they seem to have been taken on hand on 17th August, 1963. I shall be referring to the documents presently - and had been completed by the 25th of the same month. I do not, therefore, see any ground for rejecting the Government's case for the reason that the sale deed for the plot is dated 19th August, 1963. Nor do I see any point in the contentions raised in the reply that as the construction of the house started in October 1963, the wires could not have been brought in at any earlier date. I do not consider it needs any argument to disprove this. Besides, the theory that because there was no house in 1963, work could not have been done for bringing the lines near the house, is wholly inconsistent with the respondent's defence that the laying of the lines was part of the Rural Electrification Scheme which according to him was completed in 1961 and at that time the plot which he purchased was a piece of agricultural land and there was no point at the line stopping just opposite his house.

19.6. The next point raised by the respondent is that the 3 phase wire connection which now exists on the road leading to his property, really existed long prior to his purchase of the property and that the same was part of the scheme for the "rural electrification scheme" of the Kashmir Province and that he had nothing to do with the bringing of the line from the transformer along the road to the front of his house. In support of this case he relies on the circumstance that the electric lines opposite

his house do not end there but there are connections beyond and this according to him shows that the extension was not intended for his house alone but that it was meant to feed the houses in the entire area nearby. In support, he refers to the extension of the line tapped from an electrical pole opposite his house to the house of Pal Gupta and, he, therefore, submits that the wires were meant to feed the entire village of Ishbar and in an annexure to his reply the respondent specifies six houses on the right-hand side as one passes from Srinagar and to three houses on the left-hand side as those which are fed from the same electric line as that which carries energy to his house.

19.7. In more than one place in his reply the respondent invited the Commission to have a local inspection of the property and of the electrical wiring as it now exists in order to have a correct idea of the locality, as well as to appreciate the correctness of the defence. I accordingly made a local inspection of this property and Bakhshi Ghulam Mohd. who was present at his house at Ishbar received me and took me round the places which he desired me to note.

19.8. In connection with this allegation the Government have filed a plan marked as Document 2 in this allegation showing the extension of the three phase four wire line to the respondent's house at Ishbar. I checked up this plan with what I found at the locality and found that it was correct. The respondent's house is to the west of the road leading from Srinagar to Nishat. About two furlongs or so before one reaches the gate of the respondent's house, a little to the east, we have a transformer fixed on poles. It is from there that energy is tapped for electrifying this area. Straight from that sub-station which is called the Guptganga Sub-station, to the north i. e. parallel to the road, there is a single phase two wire line.

19.9. From its appearance it looked as if that was the original electric line which supplied electricity to that area. Just at right-angles to that line of supply and going towards the west and meeting the road, is a three phase four wire line. These wires were carried on two poles until they reach the road, which they did on its west-end side, and then on 12 other poles are carried in a straight line to the north towards the respondent's house. As the line is taken to the north, energy is tapped at two points in order to provide connection to two houses which are only ones before reaching the respondent's house. We have three more poles from the road opposite the respondent's house until we reach the main residential portion. Just opposite the house at the last pole to the north, energy is tapped for taking it to Pal Gupta's house referred to by the respondent as also to the Children's Home. The respondent pointed out to me how energy was tapped from the pole which is just opposite his house and taken almost straight east to the Children's Home and diagonally across the road to Gupta's house. It should, however, be pointed out, that both these extensions are of a single phase two wire line and not of the three phase four wire system as is the case with the supply to the respondent.

19.10. The respondent is no doubt right in stating that Guptganga was electrified under the Rural Electrification Scheme. In fact this is admitted by the Government and that scheme was completed in 1959, but what we are now concerned with is the origin of the three phase four wire system tapping energy at the Guptganga sub-station and ending so far as that system is concerned just opposite the respondent's house. So far as the Rural Electrification Scheme is concerned, it was, as already stated, a single phase two wire line and that still exists as could be seen from the lines which take off from the sub-station. There are some houses intermediate which also appear to draw their requirement of energy from this line. But what the respondent relies on are really two matters—

(1) That the three-phase line provides current for a couple of houses on the western side of the main road; and

(2) that there is a diversion from opposite his house to the Children Home and to the house of Gupta.

Now in relation to this, the case of the Government is that the Children Home authorities were complaining that as they were at the fag end of the supply system, they were not having proper lighting because of low voltage and also that it was very often interrupted. When a three phase line was taken to the respondent's house, advantage was taken of its existence to remedy the inconveniences felt by the Children Home authorities and that from the three-phase line so near and just opposite to the Children Home a single phase two wire line was taken to the Children Home and from there to the premises of Mr. D. N. Gupta. In regard to the houses of Rehman Bhat and Dewan Estate, two other houses referred to by the respondent it was stated that they had a single phase two wire line under the Rural Electrification Scheme but that as a three phase four wire line was being put up for the benefit of the respondent, here again advantage was taken of this circumstance to draw current from this line as it was nearer and more convenient for feeding these two houses. The point made by the Government that but for the extension of the line of the system described earlier to the respondent's house the other houses would not have derived any benefit and that it was not part of the Rural Electrification Scheme is, I consider, made out. Besides the theory that this extension was part of the Rural Electrification Scheme appears to be absurd because this extension merely provided a three phase four wire line just up to the respondent's house where it stopped.

19.11. At the time of my inspection, the respondent particularly drew my attention to the circumstance that there was no motor pump on the premises and in this connection pointed out that just on the lawn on the east of his residential building there was a duck pond which was fed by a natural spring which yielded sufficient water to overflow from

the pond which was led through a pipe to the Shali field at the back of the house. The point that he sought to make out of this was, that the statement by the Government that the three phase four wire line supply system was needed for working a pump set run by motor, was not true and that if this was so the whole case of the Government must fail. I do not however, agree that this result follows. It might very well be that at the time when the respondent desired the line to be put up he had in mind the idea of running a motor and that he found no need for it later or it might be that having regard to the type of the supply line directed to be erected the officers of the Electricity Department were under the impression that he intended to operate a motor. But in any event, if the three phase four wire line was brought from the sub-station right up to his house and that is a fact which is beyond dispute, it matters not whether it was brought for the purpose of working a pump merely in order to provide an uninterrupted supply for domestic needs in which there would be no drop in voltage.

19.12. The next question that arises is, was this extension of the line made at the respondent's direction. As I have already stated, I am not taking any notice of the statements in the affidavits of Mr Akhtar Murtaza, Assistant Electrical Engineer and others, that he did so. There are two documents in regard to which nothing by way of explanation has been stated by the respondent which by their contents would establish the case of the Government. They are Documents 17 and 18. Document 17 is the muster roll maintained by Mr. Akhtar Murtaza, Assistant Electrical Engineer for the month of July-August 1963. The reverse of the muster roll contains the details of the allocation of the labour for the month. Item No. 9 of the works done then reads—

“Estimate for Rs. 4561/- for extending LT branch line at Nishat by debit to Government for 1963-64.”

Between 17th August 1963 to 25th August, 1963 it shows that labour charges incurred were Rs 389.25. There is a note at the end under the heading 'net progress of the work. This reads—

“Levelling of LT conductors and replacing of broken X arms were made. Separate circuit of Hazratbal was taken by extending LT line from sitation. Another branch LT line was extended at Nishat as per orders of the Hon'ble Prime Minister.... (Italics mine).

And it is signed by the Assistant Electrical Engineer. Document No. 18 which is a Measurement Book (No. 158) contains the record for July-August 1963. On page 6 of this book there is a reproduction of the note which I extracted from

Document No. 17 and which reads—

"9 estimate of Rs.4561/- re:
extension of LT line at Nishat as per orders of the
(Hon'ble Prime Minister 389.25 labour charges"
(underlining mine).

The "work done" estimate for extending this three phase four wire LT branch line is to be found in Document 19 which is a file of sanctioned estimates. Page 402 of this record contains the estimate for extending the three-phase four wire LT branch line for supplying power to Ishbar village at Nishat. It gives a detailed account of the items of materials taken out of stores as well as labour charges and arrives at the total of Rs.4561/- and is signed by the Assistant Electrical Engineer. At the end of this account is a note under the heading 'report' and this reads—

"This estimate amounting to Rs. 4561/- has been framed to cover the cost of extending 3 phase 4 wire LT enamel line from Guptganga to Ishbar Village for supplying power to that locality as per SE's verbal instructions. The charges are debitable to extension Branch for 1963-64."

Document 20 is the indent of the materials used and 21 of the materials consumed. Document 22 is the stock abstract book and it confirms the correctness of Documents 20 and 21. As regards documents 20 to 22, I feel bound to state that they show that the poles carrying the wires inside the compound—there are three such—have evidently been provided by the respondent himself and at his own cost, as the number of poles taken out of the stores for the work is only 12 which corresponds to the number found on the Srinagar Nishat Road.

19.13: Now the points to be noticed about these documents 17 to 22 are these:

(1) That this extension was carried out under the orders of the respondent in 1963. It may be noticed that the genuineness or correctness of documents 17 and 18 whose true copies respondent had before him when he filed his reply and which contain the reference to his orders, has not been questioned.

(2) Though as the respondent correctly states, the Rural Electrification Scheme so far as Ishbar or Guptganga was concerned, did take place in 1959, this three phase four wire system of supply was not part of that scheme. The original system was of single phase with two wires.

(3) That the three phase four wire line ends at the respondent's house though undoubtedly the pole just opposite his house has been tapped for extension of

a single phase two wire line to the Children Home and to Gupta's house further to the north. This last in my opinion, does not alter the situation or lessen the gravity of the charge made against him by Government.

19.14 In the circumstances, the only conclusion that is possible for me to come to is that as stated in Documents 17 and 18, the low tension three phase four wire system was taken from the sub-station right up to the respondent's house only on his direction and that it was not part of any general scheme for Rural Electrification. Indeed this is wholly inconsistent with the manner in which the debit is made, namely to Extension Grant for 1963-64 and not to the Rural Electrification Scheme as contended by the respondent. On the basis of these established facts, I have no hesitation in recording the finding that the charge contained in the allegation is proved and the respondent has unfairly benefited himself to the extent of Rs. 4561/- contrary to the terms of Rule 10 of the Electricity Rules, Svt. 1995.

19.15 I shall now proceed to consider the charge as regards the electrical connection to the Chashmashshi house belonging to his son. The case of the Government as regards this portion of the allegation is to be found in the opening paragraphs of the statement of the case. Briefly stated, this is as follows: Complaints were received in May 1962 regarding the low voltage on the line on Boulevard road feeding the Mercury Vapour lamps. In order to remedy this defect, a connection was provided by underground cables to the Mercury Vapour lamps from the Chashmashahi crossing sub-station. This work was taken on hand in the first week of June 1962 and was completed within two days. When this work was in progress, the respondent happened to go there, and desired the Electrical Engineer who was there on the spot, to provide a three phase four wire line to the Chashmashahi house owned by his son, then under construction with a further direction that the expenditure be debited to the Electrical Department. Having received this direction, the Electrical Engineer communicated the orders of the respondent to the Assistant Engineer and Foreman and by engaging extra labour and obtaining extra material, the lines were extended to the house and the work completed by the end of June 1962. The cost of this work was debited to the Electrical Department under the heading "Improvement of Voltage to High Pressure Mercury Vapour Lamps on Boulevard Road."

19.16. That a three phase four wire line was taken from the Chashmashahi cross sub-station to the house of Bakshi Bashir Ahmed is not in dispute. Nor is it disputed that the cost of this came to Rs. 9000/-, nor again that this was not paid by Bakshi Bashir Ahmed but was debited to the Electrical Department. In answer to this allegation the

respondent after denying the direction by him set out earlier makes these points:

(1) That there was no house or house under construction in June 1962 as stated by Government. In support of this contention he refers to the fact that the property on which the house was constructed was purchased from Maharani Yashoraj Lakshmi, wife of Dr. Karan Singh only on 27th June, 1962, though he admits that in the sale deed as well as the gift deed of the same date in favour of Shama Mir, respondent's daughter there is a recital that possession of the land had already been given to the transferees in the year 1961. Reliance is however placed on the absence of any recital in either the sale deed or the gift deed, of any house or any construction on the land and from this the inference is sought to be drawn that there was no basis for the case of the Government that there was a house which needed electrical connection in June 1962. This, however, in my opinion is of little significance because it is admitted (vide paragraph 13 of the respondent's statement) that the electric lines were extended to this property; and

(2) The more serious point which requires careful consideration is that this extension of the line across the property of Bashir Ahmed was as part of a Government scheme to electrify Nandpora and certain other villages on the other side of the Lake. The existence of some poles still standing along the Boulevard Road from near the gate of Bakshi Bashir Ahmed's house towards the side of the Lake Pavilion was relied on as supporting this version.

19.17. The reply of the respondent is couched in language very unclear, because of its verbosity, but I understand the defence to be that Government in pursuance of a scheme to electrify the village of Nandpora on the other side of the Dal Lake just opposite the Lake Pavilion, tapped power at the Chashmashahi cross sub-station and then took the wires right across the property covered by the sale and gift deeds of June 1962, then straight on to the eastern side of the Boulevard Road. The line was to branch off near the Lake Pavilion and some poles which even now exist on the Boulevard Road leading up to the Lake Pavilion, are the traces of the work done under that scheme which was later abandoned. The wiring in Bashir Ahmed's property, however, was stated to have remained.

19.18 Coming next to the reply of Bashir Ahmed to whom notice was given under Rule 6(1)(a), after adopting the statement of the respondent he adds :

"Assuming though not admitting that the electric lines were extended solely for the two houses under reference denies that the cost of the same had to be borne by the respondent There are a number of instances where the electric lines were

extended from a sub-station to private houses at the Govt. cost."

and he has attached to his reply nine instances where according to him such connections were given to private individuals, the cost being borne by the Government.

19.19 Before proceeding further, I might summarise the points that require to be considered and decided in respect of this part of the allegation:

- (1) Was the extension of the three phase four wire supply system which admittedly exists between the Chashmashahi cross sub-station and the house of Bakhshi Bashir Ahmed at Chashmashahi, effected in June 1962 and on the orders of the respondent as stated by the Govt.?
- (2) Was this extension part of the Nandpora Electrification Scheme as contended by the respondent?
- (3) If it was not part of the Scheme, the circumstances in which the cost was debited to the Government and whether it was so done on the orders of the respondent.

I shall take these points in that order.

19.20 First, whether the work was taken on hand at the end of June 1962 and completed then as stated by the Government in their statement of the case: Here again I have to add that I am not referring to or even noticing the statements in the affidavits filed on behalf of the Government regarding the part played by the respondent in having the work started and the directions he is supposed to have given to the officers, since these officers have not been called as witness and subjected to cross-examination. I shall proceed merely on the basis of the documentary evidence whose genuineness has not been challenged.

19.21 A pole type sub-station is on the road from the Boulevard Road to Chashmashahi. From that pole a three phase four wire line has been tapped carrying energy to the mercury vapour lamps on the Boulevard Road. Besides this, there is another tapping of a three phase four wire carrying current to the garage and the main bungalow belonging to Bakhshi Bashir Ahmed. The line makes a right angle just beyond the main bungalow and goes on towards the Boulevard side to the west and at a point about two furlongs from the house it turns into a single phase two wire line. I would repeat that at the pole type sub-station as would be apparent from what I have already stated, there are two tappings one for the Boulevard Mercury vapour Lamps and another for supplying current to Bashir Ahmed's house.

19:22. In regard to this piece of property also there was a request in the respondent's reply that a local inspection by me would help to give a clearer picture of the case of both sides. As both the Government as well as the respondent desired this local inspection, I did it on the same day on which I inspected the house at Ishbar. Here, as there, the respondent was present on the spot and took me round and drew my attention to the following:—

- (1) that there were no motor pumps in the place indicated as that where it existed in the sketch (Document 1); and
- (2) that the four wire line stopped at an intermediate point from the house, beyond which there was only a single phase two wire line to the Mali's hut which could be used only for providing lights and not for running a motor.

19:23: There was one point made by Bakshi Ghulam Mohammad that the absence of a motor pump at pole No. 19 as indicated in the sketch (Document 1) which was given by the Government as the reason for the necessity for a three phase four wire supply line, negatived the Government's case. In answer it was pointed out on behalf of the Government that opposite pole No. 19 there were traces of a motor pump having existed, which it was suggested might have been removed, prior to my inspection. In support of this several photographs of motor pumps set up on wooden rafters were produced, with the suggestion that the explanation for the marks on the site was that there had been a motor pump previously on site fixed on such rafters. I do not, however, consider that it would be proper to proceed on such vague and unsatisfactory material for reaching a finding that a motor pump existed on the spot and that it had been removed in order to put forward a defence. In the absence of any direct evidence to establish that a motor pump existed on the spot, I consider it would be safe to proceed only on the footing that the place by the side of pole No 19 was in the same condition always and that no motor pump existed on the spot.

19:24. But this, however, does not necessarily lead to the rejection of the contention urged by the Government, because even if a motor pump did not exist on the site in 1963, a supply system of the type now found on the property was necessary if a pump had to be installed at a later date. Besides, if as a fact a three phase supply system was demanded or given, even without there being a motor pump on the property, it would show that the existence or non-existence of a motor pump would be irrelevant for determining whether this type of supply was required by the owner or not.

19:25. Now I turn to the documents which in my opinion conclusively establish that the lines were put up between the end of May 1962 and the end of July of that year at a time

when admittedly even on the basis of the gift deed and the sale deed by the Maharani Sahiba, Bakshi Bashir Ahmed and his sister were in possession of the property. Document No. 3 is the muster roll for the period 26th May, 1962 to 26th June, 1962. Item 10 of the work done during the month according to the page relating to the allocation of labour reads:

"Estimate 9968 02 for thickening the existing conductor three phase four wire line for improving voltage to HT MV lamps at Boulevard".

The work is shown to have been done from the 1st June right up to 25th June, 1962 at a total cost as regards labour of Rs. 753.63 (vide Document 5 Measurement Book 143, page 38), the head to be debited being "Maintenance Grants 1962-63". The muster roll for the next month is Document 4. In it this work is item No 3 and it shows that work was done on 25th, 27th, 28th, 29th June and on the 1st July and the total expenditure incurred in that behalf being Rs. 157.33 (vide Measurement Book No 143, page 45). Here again the expenditure is to be debited to "Maintenance Grants." The daily labour report (Document 7) of the relevant dates confirms the contents of these documents. Documents 8 and 12 are the "work done" estimates which set out the materials indented for this work and which are dated 16th July 1962 and 18th July, 1962 and the work is described as "work done estimate for improvement of voltage for HP MV lamps at Boulevard estimate 9968.02". Documents 9 and 10 which are respectively the monthly consumption of divisional stores and the adjustment sheets in regard to this work, as well as Document 11 which is a stock abstract book which carries out the adjustments mentioned in Document 10, all bear out the items which were taken out of the divisional stores for completing this work and the description of this work "as improvement to the high power mercury vapour lamps at Boulevard" is given. The items of materials taken out and used on the work are seen to correspond to what is now found on the spot by way of poles etc. In the Chashme Shahi house and they were not used for improving the voltage of the mercury vapour 'lamps' at Boulevard. By way of illustration I might refer to 19 Deodar heavy poles and 4 light poles which are now found on the spot—of which the first set carry the lines to beyond the residence and the others take them to the mali's hut. Document 13 is dated 7th July, 1962 and is a letter from the Assistant Electrical Engineer to the Electrical Engineer, Srinagar. In it he encloses the "work done" estimate in triplicate for "improvement of voltage for HP MV lamps at Boulevard" for favour of further necessary action. The work is stated to have been taken on hand as per verbal orders. Document 14 is from the Electrical Engineer to the Superintending Engineer dated 27th July, 1962 sending up "the work done" estimate and requesting sanction and allotment of funds "to enable regularisation of expenditure already incurred on this account". On the basis of these documents I do not entertain the least doubt that the work was done here as a comparison of the materials indented for and used with

that found on the spot clearly establishes that the indent was for the purpose of putting up the lines which are the subject of that charge in this allegation. It is also clear that these lines were put up in 1962 between the 1st June and the 1st July, 1962 at a time when Bakshi Bashir Ahmed was admittedly in possession of the property.

19.26 What I might call the main part of the defence of Bakshi Ghulam Mohammad is that the wires were taken across this property from the Chashmashahi cross sub-station to the Lake Pavilion because it was the shortest route. Undoubtedly if that was a part of that scheme and was a benefit which Bakshi Bashir Ahmed incidentally derived by the wires being taken across his property he would be justified in claiming that the cost of the extension should be borne by the Government.

19.27 The question I have, therefore, to consider is whether it was part of the Nandpora Scheme. Pausing here, it has to be pointed out that the villages across the Dal Lake beyond the Lake Pavilion have now been electrified, the wires being taken not via the Lake Pavilion but from across the Nehru Park. If the respondent is right in his defence that there was a scheme to electrify Pathi Badahar or Nandpora in 1962 and that the wooden poles now found on the Boulevard Road from the Mali's hut of Abdul Majid and across the road along the road leading to Lake Pavilion, were erected as part of that scheme, that would be a complete answer to the case set up by the Government. I should here refer to a representation made to me by the respondent at the time of the local inspection. At that time the respondent pointed out to me an electric pole standing on the land of Abdul Majid and stated that during the summer of 1965, some officers of the Police Department trespassed upon the property with a view to removing the pole and thus obliterate the evidence in support of his case that the supply to the Chashmashahi house of his son was part of the Nandpora Scheme. I then told him that if the poles would substantiate his case, there were enough poles on the foot path and one or two even on the road from the Boulevard to the Lake Pavilion, but that if he was replying on the attempt by the Government to obliterate it as some proof of their guilty mind, he must file an affidavit in that respect before the commission and that I would not take any notice of his oral statement in that behalf. I understood him to say that he would be filing affidavits or making statements of a formal nature before the Commission, but he refrained from doing so.

19.28 Proceeding to deal with the merits, I have now to examine —

- (a) when the Pati Badahar or Nandpora scheme was thought of; and

(b) the origin of the wooden poles now found along the Boulevard Road.

I directed the Government to file before me the entire files in relation to the Pati Badahar scheme and I have examined these files. The Pati Badahar scheme appears to have been sanctioned for the first time in March 1964 but no estimates were prepared with the result that the Superintending Engineer Srinagar wrote to the Executive Engineer on 12th May, 1964 calling for an explanation as to why this estimate was not prepared. This estimate was submitted on 1st June, 1964 which included not merely this work but several other villages and an application was made for technical sanction. The total estimate for electrification of this area was ascertained as Rs. 51,525 00. This included the cost of both High Tension (apparently for the purpose of use of Industrial power) and Low Tension for lights, fans and light machinery. For the High Tension line they were to tap at the sub-station from which the line to Bashir Ahmad took off and that line was to pass through Agricultural and other land to the east of Boulevard Road. Nine High Tension poles were, fixed at various places on the Boulevard foot path for carrying these wires. But it is stated that as more poles could not be obtained, the proposal was dropped and that the High Tension line was taken from the Nehru Park instead. The original estimate made a provision for 26 poles, but it is stated, that only nine were available and that was the reason why the connection through the Lake Pavilion was dropped. In the file there is a note on the back of page 9 which reads:

"There is a proposal for extension of high tension line, putting up new sub-station and extension and improvement of L. T. lines at Pati-Bada Har.

The work was started as per Ex-Engr's. instruction in anticipation of sanction and approval of the estimates. L. T. part of the work has been complete as per proposal. H. T. work was taken up but was stopped after erection of a few poles, as the change of present proposed H. T. line alignment was not agreed by the ex-Executive Engineer.

The materials carried to site are lying on spot. Kindly discuss the matter with EE and obtain final orders. The materials are at site at risk as no proper store arrangements are available at site pl."

This is in August 1964. Then on page 10 of the file there is a communication from the Assistant Electrical Engineer to the Executive Engineer which reads :

".....Originally H T. tap and transformer station has been provided in the estimate. The work of erection of H. T. tap was started and was (had) to be suspended

for want of poles. The H. T. poles are available now, but the work could not be re-started as per your verbal orders. Orders are solicited if this work is to be given up so that the material lying at site are returned to the stores."

The final result is to be found in the next letter No. 962/RE dated 20th February, 1965 (page 11 of the file) from the Assistant Electrical Engineer to the Executive Engineer. He says:

"9 No. H. T. poles have been erected and the work remains suspended since long. The area has however, been electrified from the existing Sub-Station by extending L. T. to a distance of above 2 miles. This, I think, is not feasible in view of the voltage drop and summer loads of the park and adjacent areas. As such it was previously proposed to electrify this area by extending R. T. and installing an independent Sub Station. Instructions are therefore solicited."

We are not concerned with what happened subsequently, but I have made these long extracts only for the purpose of showing that there is no substance in the defence that the work done in June 1962 was part of the Nandpora or of Pati Bada Har Scheme which really commenced in 1964. Besides, we have an explanation from the official records as to the origin of these nine poles which are found on the foot path of the Boulevard Road leading up to the Lake Pavilion. The existence of these poles therefore afford no support to the story put forward that they were erected in 1962 as part of the Nandpora or Pati Bada Har Scheme and that the scheme was abandoned in 1962, the extension to Bakshi Bashir Ahmed's house being the only result of that scheme.

19.29 There is another circumstance which in my opinion, strongly negatives the theory that the extension of the lines to the house of Bashir Ahmed was part of the Nandpora Scheme. Right from the start the entire cost of Rs. 9968/- and odd made up of Rs. 9000/- attributable to the extension of the line to Bashir Ahmed and Rs. 968 odd for connecting the sub-station to the underground cables providing energy to the mercury vapour lamps, is treated as one whole and is debited to head "the strengthening of the mercury vapour lamps"—a situation which is wholly inconsistent with the Rs. 9000/- being an expense incurred as part of the Nandpora extension scheme.

19.30 If, then the story that it was part of the Nandpora scheme is rejected, the question to be considered is the manner in which this electrical connection to Bakshi Bashir Ahmed's house was obtained. This brings me to the third point which requires consideration, namely the part played by the respondent in getting this connection put in. Bakshi Bashir Ahmed does not say that he wanted these lines to

be put up or that he made any application for the purpose. If he is to be believed, the officials of the Electricity Department did it of their own accord and as part of Pati Badha scheme. If the theory of the Pati Bada Har scheme fails there was no provocation for the officials of the Electricity Department doing this favour to Bakshi Bashir Ahmed on their own initiative. This naturally brings in the respondent as the person who alone could have got the officers to do it. Mr. Khanna, learned counsel for the Government made two submissions: (1) That the officers of Government would not have carried out this extension without either his direction or his knowledge and connivance and (2) that they dare not falsely include the expenditure incurred on this extension in the Boulevard lighting scheme, without the direction or at least knowledge and connivance of the respondent. Thus, even though I have not accepted or acted upon the statements by the officers in their affidavits of the verbal directions given by the respondent for doing the work and for debiting it to the Boulevard scheme, a conclusion to the same effect has been reached by the inescapable logic of the events and by the frivolous and untenable nature of the defence set up. I cannot also refrain from pointing out the fact that the respondent as seen from Document 17 & 18 is shown to have personally directed the carrying of the wires to his house in connection with the three phase four wire line at Ishbar, which is some confirmation or support for my conclusion that in the case of the house of Bakshi Bashir Ahmed also the installation of these electric lines must have been due to his intercession.

19.31 Before concluding, however, there is one matter to which I am bound to refer. These are the documents listed as a supplement to the reply of Bakshi Bashir Ahmed to which in the body of the reply reference is made in support of the defence that the cost was rightly borne by the Government. The first item in this list is the working estimates against additional generating sets at the Ganderbal Power House prepared and submitted by the Executive Engineer Srinagar for the years 1961-62, 1962-63, 1963-64 and 1964-65. The estimates for 1961-62 are not available and there is a statement by the Executive Engineer in support thereof. As regards the estimates for the other three years they have been produced and I have perused them, but I am unable to find their relevancy for answering the charge now under consideration. Item No. 2 requires the production of working estimates for supply of power to nine residential houses. These are the houses of Syed Mir Qasim, Dr. Nazir, two houses of Dr. Ali Mohd Jan, the house of Mir Ghulam Rasool and the houses of Mr. Rajpuri, ex-Minister, Ghulam Hassan, Mukhtar Ahmed brother of Mr. Ghulam Hassan Superintending Engineer, Maintenance Circle, Mr. Matoo, Law Secretary and the house of Col. Ghulam Qadir, the Children Home at Ishbar, the house of Pal Gupta and lastly Dewan Estate and the houses of Dr. Amar Nath and Rehman Bhat.

19.32. As regards Mr. Mir Qasim, there were no mercury vapour lamps installed at his residence as stated in the Annexure A of the reply but in connection with the security arrangements of the house of the Chief Minister who occupied the neighbouring house, some electrification took place at Government cost. The file pertaining to this has been produced and it opens with a request by the Superintending Engineer Maintenance Electricity Circle to the Executive Engineer "to instal sufficient lighting points on the back side of the Hon'ble Prime Minister and Hon'ble Revenue Minister's residences facing Shankracharya Hill, so that any mischief-mongers or trespassers are observed at any time during the night". I do not see the relevancy of the electrification in the case of Mr. Syed Mir Qasim with that in the allegation now under consideration. Besides, it is rather curious that it is not the respondent who claims that he was entitled to electric lines at Government cost when he was the Prime Minister, but the claim is made on his behalf by Bakshi Bashir Ahmed who has really no say in the matter of the electrification of the house at Ishbar

19.33. The next item is the electrification of the house of Dr. Nazir Ahmad at Zadibal. In respect of this, Akhtar Murtaza, Assistant Electrical Engineer has filed an affidavit that there was no consumer named Dr. Nazir Ahmad at Zadibal sub-station. Bakshi Bashir Ahmed did not seek to prove the existence of a house of this individual at the place and regarding the connection that he obtained from this sub-station by any further evidence.

19.34. The third individual referred to in the Appendix is Dr. Ali Mohd. Jan and the connection is stated to have been taken from Tulsibagh sub-station. In regard to this it is pointed out that a single phase line was extended to the Tulsibagh area and that the extension was not for him alone but for the entire area and, therefore, the cost was naturally debited to the Government.

19.35. The house of Mr. Mir Ghu'am Rasool is the next instance relied on and in regard to this it has been stated that it was a very old installation and that the record was not traceable. As Bakshi Bashir Ahmed has not specified even the approximate date when this line was sanctioned and constructed, it has not been possible to verify the correctness of the statement.

19.36. The next is the case of a group of individuals and in regard to them it has been stated by Mr. Fazal Haq, Assistant Electrical Engineer on oath in an affidavit filed by him that—

"from a perusal of the records I say that no new line has been extended to the houses of Messrs. Ghulam Hassan, Mukhtar Ahmed, T. N. Mattoo at Nishat and to the house of Col. Ghulam Qadir at Brain. The lines existing near the said premises are part of the

net work laid long back in connection with the electrification of the area. That Mr. Rajpuri is not a recorded consumer of our department at Nisbat and no file exists pertaining to the said house".

The last of the items called for by Bashir Ahmed was a record or document showing electric connection given to private houses situated on the Boulevard Road between Oberoi Palace Hotel and Chashmashahi crossing in 1950, 1961 and 1962. In regard to this Mr. Fazal Haq has in his affidavit stated:

"No private houses or huts situated on the Boulevard Road between Oberoi Palace Hotel and the Chashmashahi crossing have been provided with electrical connection in the years 1960, 1961 and 1962."

and Bakshi Bashir Ahmed who has seen this affidavit has not chosen to contradict its contents. These exhaust the files called for by the defence.

19.37 On the materials placed before me by the Government, I am of the opinion that Bakshi Bashir Ahmed has obtained an improper benefit of Rs. 9,000/- by way of electrical connection in violation of Rule 10 of the Electricity Rules by reason of the abuse of power of the respondent.

20.1 The third category comprises the charge contained in Allegation 20. The respondent is charged in this allegation with having abused his power by granting a lease of the land and building whereon Nedous Hotel is conducted, for 20 years to a firm the principal partner of which was Mrs. Yasmin Bakshi wife of Bakshi Bashir Ahmed.

In the notification this allegation reads:—

"Bakshi Ghulam Mohammad by abuse of his official position secured a profitable business for his daughter-in-law by getting lease of the Nedous Hotel at Srinagar and Gulmarg, held by M/s Nedous and Sons, transferred to Shri Ghulam Qadir (who had already agreed to take Mrs Bakshi Bashir Ahmad, daughter-in law of Bakshi Ghulam Mohammad as a partner), and by getting it renewed for a period of twenty years, against rules in the year 1963."

20.2 As would be seen from the text of the allegation, the charge is that the respondent abused his official position as Prime Minister and managed to secure the profitable business of Nedous Hotel for his daughter-in-law Mrs. Yasmin Bakshi by granting her a renewal of the original lease for 20 years in the year 1963. There is no dispute as to the fact that this in the year renewal for 20 years of the land and buildings in which Nedous Hotel at Srinagar and Gulmarg were being run was effected

in 1963 and that Yasmin Bakshi, wife of Bakshi Bashir Ahmed was a partner with Harry Nedou in whose name the lease was granted and entitled to a half share in the profits of the business and that over Rs. 3 lakhs was contributed by her as capital for this venture of hers. The official files establish that the respondent, took a leading and decisive part in the granting of this renewal. The only points in controversy which arise by reason of his defence are: (1) whether the respondent was aware of Yasmin Bakshi's interest in the lease and of her partnership with Harry Nedou; and (2) whether the granting of this renewal of the lease was irregular and whether the irregularities were committed in order that Yasmin Bakshi should be benefited.

20.3 I shall promise the discussion of these questions by a narration of the history of the property and of certain other facts which are not in dispute. The properties in which the Nedou's Hotels at Gulmarg and at Srinagar are being conducted belong to the Government. Messrs Nedous & Sons have been on the property as lessees at Gulmarg ever since 1888 and at Srinagar from 1900 onwards and have been conducting the business of hoteliers in these two places, these being the dates of their construction. Tourism being one of the main industries in the Kashmir Valley and tourists the life-line of the State's economy, the importance attached to these hotels does not need any special mention. These leases which were usually of 5 years duration were being renewed from time to time generally for periods of 5 years at a time though occasionally for a ten year term. The lease in favour of the Nedous of the hotel buildings and premises at Gulmarg was to expire on the 31st December, 1958 while that of the hotel buildings at Srinagar on the 12th April, 1959, when these leases were about to expire two questions arose - (1) Whether the leases should be renewed in their favour, or be granted to others, and (2) whichever be the course adopted, the terms and conditions on which the renewal or grant should take place and these were the subjects of anxious consideration by the Development Department of the Government. On the 6th December, 1958 a note was prepared regarding these matters by the Secretary to the Development Department which has been filed as Document 21 in this Allegation. After discussing the question as to whether it would be proper and in the interests of the State to terminate the lease in favour of Messrs Nedous and get in a stranger lessee, he recorded his strong opinion that Messrs Nedous must be allowed to continue the lease. His further suggestion was that the period of the lease might be determined by the Government after negotiations and as regards the terms and conditions, the suggestion was that the renewal of the lease in their favour should be on condition that they improve the furnishing, service and amenities of the Hotel and also that in regard to the extra cost of this modernisation borne by the

Government Messrs Nedous should be charged 5½% on the capital outlay. The note added that as the date for the expiry of the two leases was drawing near, to be fair to the lessees the matter might be decided quickly so that they should be in a position to undertake bookings for the next season. Notwithstanding the urgency pointed out in this memorandum, the Cabinet took its own time for consideration and provisionally renewed the leases for one year so that the date of expiry of the lease became 31st December, 1959 and 12th April 1960 for the Gulmarg and Srinagar properties respectively. Even when this period was about to expire, nothing definite had been decided and the matter came up before the Cabinet on 13th January, 1960. At this meeting it was decided that the leases might be renewed for a period of five years subject to the condition of the furniture and fittings being renovated, and further it was expressly directed that orders granting this renewal would issue only after the Prime Minister had communicated the conditions to Nedous and got their undertaking to implement the same. The official files do not show, whether or if so when the Prime Minister met any representative of Messrs Nedous and discussed the matter with them.

20.4 As no orders granting the renewal of the lease had issued or communicated, the Divisional Engineer Construction addressed a letter dated 10th May, 1960 marked "express" to Messrs Nedous & Sons, informing them, that as formal sanction had not been received by his office renewing the lease, the premises had to be vacated immediately, (File No. PW-174 C/63—Part I Works & Power Department Re.: lease of Nedous Hotel). Messrs Nedou & Sons thereupon addressed a letter to the Chief Secretary on 12th May, 1960 enclosing a copy of the letter from the Divisional Engineer received by them and after referring to the previous applications they had made for renewal requested that the lease might be renewed at least for one year pending further negotiations. This was evidently put up to the P. W. D. Minister Shri Chuni Lal Kotwal, who immediately wrote to the Prime Minister (vide his D O. No. PW 53-B/58 dated 16th May, 1960) in which he drew the Prime Minister's attention to the discussions which he himself had with him on this matter and requesting that the discussions with the lessee envisaged by the Cabinet resolution might be completed early as the lease had expired without a formal renewal being granted. A note was prepared by the Chief Secretary in May 1960 evidently for submission to the Cabinet, in which it was pointed out that orders could issue only after the Prime Minister had communicated the conditions to Messrs Nedous and an undertaking obtained from them to implement the same and the suggestion that the same conditions for renewal would apply to the Gulmarg Hotel was approved by the Prime Minister by a noting by him on the margin on 29th May, 1960. Things, however, continued in the same state with the lessees Messrs Nedous not knowing precisely what their position was, whether the lease was going to be

renewed or whether they had to quit. It was a considerable time after the leases expired that the matter was again put up to Government and a renewal for five years was granted in December 1960 in respect of the two leases with effect from 13th April, 1960 and 1st January, 1960 in regard to the Srinagar and Gulmarg properties respectively. They evidently wrote a letter to the Prime Minister on 8th January, 1961 regarding renovation of furniture and fittings. The direction in this Government Order (Document 14 in Allegation 9, G.O. No. PW 146 Dev. of 1961) was that the commitment in writing should be taken from the proprietors in the first instance and that when the fresh lease was drawn up the conditions contained in the undertaking should be incorporated as terms and conditions. It does not appear that the first part of the direction was in terms carried out. It is further not clear from the official files whether the renovation promised was implemented or not.

20.5. What next we have are two letters both addressed to the Prime Minister and both dated 15th June, 1963, one by Messrs Nedou & Sons and the other by Harry Nedou (Documents 1 and 2). The main part of the charge in this allegation starts from now on. By the first letter which was signed by Willie Nedou the sole proprietor of Messrs Nedous & Sons the Prime Minister was informed that all the moveable properties along with the fittings and fixtures in the two premises of Nedou's Hotel Srinagar and Gulmarg, all the interest and goodwill of Messrs Nedou & Sons in the trade and business as well as the remaining period of the lease of the two premises had been transferred by them to Col. Harry Nedou *alias* Ghulam Qadir with effect from 1st November, 1963. In view of this transfer the letter prayed that the leases of the two Hotels might be transferred in the name of Harry Nedou.

20.6. The second letter was complimentary to the first and was by Harry Nedou in which he prayed that as he had obtained the interest and goodwill of Messrs Nedous & Sons and had purchased all the moveable properties with fittings and fixtures, the leases might be transferred in his name from 1st November, 1963 *and the leases be renewed on the existing terms for a further period of 40 years from the date of the expiry of the current periods of lease* (underlining mine) Both Willie Nedou and Harry Nedou together met the respondent personally and delivered the two letters written by them. It was evidently treated by the respondent himself as a personal and informal communication to him for we find that there are no entries in the receipt registers as regards their receipt. The respondent on receipt of letters marked them to the Minister-in-charge Mr. Shamas-ud-Din who in his turn marked them for the consideration of the Chief Engineer, Roads and Buildings. The Chief Engineer made notings on this letter (Document 3) in which he stated that there could be no legal objection to the transfer of the lease in favour of Harry Nedou. He pointed out that there were some arrears due by Messrs Nedous & Sons which

would have to be cleared either by the transferor or by the transferee. In a separate note (Document 4) he computed the rental payable on the basis of the percentage of the capital cost and suggested the figures at which in the event of renewal being granted as prayed for the rent might be determined. We have next on the 29th June, 1963 a letter addressed to Messrs Nedou & Sons to respondent by which they thanked him for the transfer of the lease. The letter reads:

"I thank you for the interview you very kindly granted me on Saturday the 15th instant (when apparently Documents 1 and 2 were presented in person) also I am very grateful to you for permitting the transfer of the remaining portion of the lease for Srinagar and Gulmarg Hotels to Col. Ghulam Qadir."

20.7 In regard to this letter there was one point made by Government to which I must advert. If the contents of the letter correctly indicated the result of the interview on 15th June, 1963 it would mean that the respondent had granted the request for the transfer of the lease even on the 15th June when documents 1 and 2 were presented to him, without reference to the Department and without reference to the Minister in charge. The respondent, however, in paragraphs 15 and 16 of his reply while admitting that these applications (Documents 1 and 2) were presented to him personally, denies that he acceded to the prayer for transfer contained in them immediately, adding that he could not have done so because the matter concerned another Minister and had to be decided by the Cabinet. He further states that when he received the letter dated 29th June, 1963 from Messrs Nedous & Sons, he wrote a reply in which he clearly pointed out that the inference drawn by Willy Nedou at the interview on the 15th June was erroneous and that on the other hand he told him that the matter pertained to another Minister. He further asserts that this reply of his to Messrs Nedou & Sons has been suppressed by the Government, adding that a copy of this reply by him must be in the same file as that from which the letter dated 29th June, 1963 was obtained. Learned counsel for the Government submitted that this explanation by the respondent was false and that there was no ground for saying that the statement in the letter (Document 5) of Messrs Nedous & Sons was erroneous. In the first place Government have placed before me an affidavit of Willy Nedou in which he states that he received no reply from the respondent as alleged by him but this I am disregarding. Secondly the Government files do not contain any copy of the reply stated to have been sent to Messrs Nedous & Sons. Documents 1 and 2 were not, as stated already, receipted or indexed in the office and were found in the file of papers in the office of the P. W. D. Minister Mr. Shamus-ud-Din. What is now produced as Document 5 is not the letter forwarded to the Prime Minister but a carbon copy of it which was

forwarded by Willy Nedou to the Divisional Engineer Estates Division for the purpose of calculating the amounts due from him to the Government under their lease. In the circumstances I accept the natural inference flowing from the statement in the letter of Nedous and Sons dated 29th June, 1963, namely that even when the petition was presented on the 15th, the respondent had promised that the prayer for the recognition of the transfer would be granted.

20.8. After the Chief Engineer made his note on the application (Documents 1 and 2), Mr. Shams-ud-Din, Minister for Works, Irrigation & Power to whom they had been marked by the Prime Minister replied to the letter on 2nd July, 1963 sending him copies of the Chief Engineer's notes. It was thereupon marked for the Cabinet by the respondent on 3rd July, 1963. A meeting of the Cabinet had been fixed for 11th July, 1963 and this item was included in a supplementary agenda for that meeting, as item No. 5 (Document 7). That item was set out in the agenda thus: "Transfer of lease of Nedous Hotels at Srinagar and Gulmarg by Messrs Nadous & Sons to Col. Harry Nedous alias Ghulam Qadir" and in place of the usual departmental memorandum what was circulated to the members of the Council was the D.O. letter by Mr. Shams-ud-Din to the Prime Minister in which he had forwarded the notes of the Chief Engineer. On the 11th July decisions were taken by the Cabinet in respect of two matters: (1) The transfer of the balance of the subsisting lease to Harry Nedou, and (2) a renewal of the lease of the lands, buildings and premises in the name of Harry Nedou for a period of 20 years *w.e.f.* the dates of the expiry of existing leases with, however, an enhancement of rent in respect of the Srinagar Hotel from 5 to 6½% of the capital cost from the date of the renewal.

20.9. Pausing here, there are two matters to which it is necessary to advert. The first is that the item in the agenda referred only to the transfer of the subsisting duration of the lease to Harry Nedou and that on this agenda it was irregular to have passed the resolution sanctioning the lease for 20 years from the expiry of the lease then subsisting. Learned counsel is right in saying that the terms of the agenda were rather restricted and also that the question of the duration of the renewed lease was not commented on or discussed by the Chief Engineer in the notings which he made on documents 1 and 2. Closely connected with this it was pointed out that right from the beginning of the commencement of the lease in favour of Nedous & Sons in 1888 and 1900 the duration of no lease or renewal had been for more than 10 years, most of them being for periods of five years. The question legitimately arises what justification was there for this renewal for such a long period as 20 years by which the Government committed themselves to a fixed rate of rent during the period. I do not find any satisfactory answer or explanation to this question

attempted by the respondent which has been prominently raised in the statement of the case filed on behalf of the Government.

20.10 The second point raised is that though the application for transfer had been noted on by the Chief Engineer and his office, the same had not been processed by the Development Department. Here it is pointed out that when the Development Department processed in December 1958 a proposal regarding the renewal of the lease after 1958, they had examined the experience and qualifications of the partners of Nedous & Sons and the Development Secretary had expressed his opinion that as Messrs Nedous & Sons had a reputation and were experienced in the line, it was proper and in the interest of the State that the renewal should be made in their favour and that it would not be in the interest of the public to have the hotels run by other hoteliers or by a new-comer. If, however, the lease was not to be renewed, it was said that the lease might have to be auctioned under the Land Grants Rules, 1960. I do not find this submission very appealing, since it would not be posited that the highest bidder would necessarily be a satisfactory hotelier.

20.11 There is, however, some substance in another submission made, that the name of Yasmin Bakshi was kept secret and that not even the fact that Harry Nedou had a partner, in which case, the identity of the partner and his or her qualifications or experience might have to be investigated. Besides it was stated that Harry Nedou, though he belonged to the same family of Nedous, had really no experience in the hotel business and that if this had been brought out, the respondent would not have found it easy either to get the department or the Cabinet agree to the transfer of the lease or to effect a renewal for a period of 20 years in favour of Harry Nedou. It was also submitted that the question of the financial resources of Harry Nedou — whether he would be in a position to pay the Government its dues — would have been the subject of investigation and this also would have proved that Harry Nedou was in reality without resources by himself if Yasmin Bakshi was left out of account and on that ground the

Department would have stood against the renewal of the lease in his favour.

20.12 It was pointed out that admittedly before the 15th June, 1963 Yasmin Bakshi had entered into an oral arrangement with Harry Nedou, the agreement being that Harry Nedou should obtain the transfer and renewal of the lease in his own name, but that the term should be held for the benefit of their partnership. It was submitted that it was because Bakshi Ghulam Mohammad knew of Yasmin's interest in the affair, that he first agreed to the transfer even before it was brought to the Cabinet and then had the formal resolution passed by the Cabinet without informing his colleagues about his daughter-in-law's interest in the lease which they were sanctioning.

20.13. Most of the facts relating to this contention are established by the terms of the agreement in writing entered into between Harry Nedou and Yasmin Bakshi dated 18th July 1963—a document whose genuineness is admitted and which has been marked as Document No. 10 in this allegation. This agreement recites that the parties decided under an oral agreement to purchase the movable property along with goodwill and the unexpired lease from Willy Nedou. Though the date of the oral agreement is not set out, it is clear that this must have been before the 15th June, 1963 on which date the applications (documents 1 and 2) were presented to the respondent and who according to Document No. 5 orally agreed to have the transfer recognised and given effect to. I say this because the agreement of partnership recites that the parties thereto had agreed and authorised Harry Nedou to negotiate the purchase and apply for the transfer of the lease and get the lease transferred in the name of the first party, i. e. Harry Nedou. The submission of learned counsel for the Government that the applications contained in Documents 1 and 2 though ostensibly in the name of Harry Nedou were really on behalf of himself and Yasmin Bakshi is, therefore, fully established.

20.14. Proceeding further, the document recites that Yasmin Bakshi was to secure and provide finance to the extent of Rs. 3 lakhs to be paid to Messrs Nedou & Sons in order to purchase the fittings and fixtures. Under the agreement which was attested by Shama Mir, daughter of the respondent, Yasmin Bakshi was to have a half share in the profits as well as in the assets of the partnership.

20.15. The purchase from Nedous & Sons of the moveable properties and fixtures for which finance was to be arranged by Yasmin Bakshi was to take effect on the 1st November, 1963. On the 28th October, 1963 the partners opened a current account in the United Commercial Bank, Srinagar. In the account opening form (Document 12) Harry Nedou and Yasmin Bakshi were shown as the two partners and according to it the business was to be run in the name of Kashmir Hotels. I have only to add that Bakshi Bashir Ahmed provided the necessary finance of Rs. 3 lakhs odd for the purpose of effecting the purchase of the moveable properties etc. From the 1st November, 1963 this hotel business was run by the new firm consisting of Harry Nedou and Yasmin Bakshi in the business name of Kashmir Hotels.

20.16. Implementing the Cabinet decision dated 11th July, 1963 and the Government Order issued in consequence (Document No. 9) a lease-deed was executed on 28th October, 1963 between the Government of Jammu & Kashmir and Col. Harry Nedou alias Ghulam Qadir whereby he was granted a lease of the premises for 20 years from 13th April, 1965 to 13th April, 1985 for Srinagar Nedou's Hotel and from 1st January, 1965 to 1st January, 1985 for Nedous' Hotel, Gulmarg, paying annual rent of Rs. 52,000 on a capital cost of Rs. 8 lakhs at $6\frac{1}{2}\%$ for the Srinagar Hotel and Rs. 10,225/- for the Gulmarg Hotel as per the suggestion of the Chief Engineer in Documents 3 and 4. I do not think it necessary to refer to the other terms and conditions of this lease.

20.17. But before this formal lease was executed on the 28th October, the respondent had ceased to be the Prime Minister having resigned that office from 7th October, 1963. On the 22nd December, the Accountant General, Jammu and Kashmir wrote to the Secretary, Development Department, making inquiry on certain matters. These were—

- (1) Why the lease was renewed for such a long period as 20 years without inviting open and competitive tenders.
- (2) As the lease was proposed to be transferred to Harry Nedou from 1st November, 1963, why the enhanced rental at $6\frac{1}{2}\%$ instead of 5% of the capital cost was not insisted on being paid from 1st November, 1963 instead of under the agreement only from 13th April, 1965.
- (3) The capital cost of several Government buildings in Srinagar had been revised to get them into accord with their present market values. The question put was why this was not done in the case of Nedou's Hotel.

- (4) In calculating the capital cost for determining the rental payable only the cost of the buildings was included but not the value of the land which in a locality such as where the Hotel was situated was very high. The question put was why this was not included.

There were also other questions as regards the manner in which the capital cost was ascertained for computing the rent. There has not been, so far I can see, any answer to these queries by the Government that succeeded Baskhi Ghulam Mohammad, but I am drawing attention to this document merely for the purpose of showing that the submission made by the Government that if the proposal for the lease and the terms upon which the renewal should be granted as well as the duration thereof had been properly processed and discussed by the several departments of the Government, the terms of the lease might possibly have been different, assuming that they would have supported a lease to the partners who were to run the Hotels. In view of this consideration, the suggestion made was that the respondent deliberately bypassed these other departments and even to start with promised the recognition of the transfer and the grant of the renewal, being moved to do so by the circumstance that his daughter-in-law was virtually the applicant.

20.18. To fulfil the terms of the agreement Yasmin Bakshi got from Bakshi Bashir Ahmed Rs. 3,30,000/- for payment to Messrs Nedous & Sons as the price settled for the furniture, fitting and moveable property and the good-will. Two cheques, one for Rs. 2 lakhs and one for Rs. 15,000 totalling Rs. 2,15,000 were issued and the amounts were transferred from the account of Fairdeal Motors to the account of Kashmir Hotels. Thereafter a cheque for Rs. 55,000 was drawn by Bakshi Bashir Ahmed on his personal account with the United Commercial Bank and credited to the account of the Kashmir Hotel. Lastly, a cheque for Rs. 60,000 was drawn by the New Bharat Transporters, a proprietary concern run by Bakshi Bashir Ahmed, in favour of Kashmir Hotels and was deposited to the credit of Kashmir Hotels. On 31st October, 1963, a cheque for Rs. 3,30,000 was drawn by Kashmir Hotels in favour of Harry Nedou which he deposited in his own name and from this account he drew two cheques for Rs. 2,75,000 and Rs. 50,000 in favour of Willy Nedou in payment of the sum due under their purchase agreement. It is, thus, clear that the entire finance required for starting this new firm was provided by Yasmin Bakshi by obtaining the same from Bakshi Bashir Ahmed.

20.19. On the 31st October, 1963 a formal document was executed between W.A. Nedou calling himself the vendor and Harry Nedou called the purchaser by which in consideration of the receipt of the two sums of Rs. 2,75,000 and Rs. 50,000 he conveyed the possession of the premises, title, goodwill, moveable property etc. of Nedou's Hotel to the purchaser (Document 20). This completes the narration of the facts in relation to this allegation.

20.20. Before considering in detail the two questions (1) about the part played by the respondent in this transaction and (2) whether

and if so how the lease was irregular and whether these irregularities were deliberately caused by reason of the desire to favour Yasmin Bakshi, it would be convenient to set out two points raised in the statement of the respondent as well as of Yasmin Bakshi and of Bakshi Bashir Ahmed to whom also notices were given under Rule 6(1)(a) of the Act. Taking Yasmin Bakshi first—because she is the party that obtained the benefit of the lease—she admits in paragraph 4 that Col. Harry Nedou, her partner, saw the Prime Minister and personally delivered the applications (Documents 1 and 2) and if taken in conjunction with other parts of her reply, that he did so also on her account. Harry Nedou in an affidavit that he filed had stated that he had no money to invest and, therefore, he approached Yasmin Bakshi. Yasmin Bakshi denies the correctness of the statement and says that “she does not admit” that Harry Nedou had no money to invest nor that he had no experience of the hotel business. It is, however, to be noticed (1) that she does not refer to any monies having been provided by him—seeing that the entire sum needed for purchasing the concern came from Bashir Ahmed; and (2) nor does she state as to where he was employed or what he did to have gained experience. After all, he was her partner and one must take it that she would have satisfied herself about his experience in the business before she risked as much as over Rs. 3 lakhs in a venture with him as a partner. After denying that she was unaware of any irregularity having been committed in getting the transfer and the lease sanctioned, she denies that the respondent in fact permitted the transfer of the lease even before the case was put up to the Council. This is not easily understood because the source of her knowledge of this matter could either have been Harry Nedou or her father-in-law and as she says that she had no knowledge of the letter (Document 5) dated 29th June, 1963, it is not clear whether this assertion is based upon what she heard from the respondent himself. In view of the contents of Document 5, Harry Nedou is more likely to have told her just the reverse. But the more curious thing about this reply is in paragraph 8 which deserves to be set out in full.

“This respondent submits that the oral agreement between this respondent and Col. Harry Nedou was kept a secret both by this respondent as well as by Col. Harry Nedou, who did not disclose this information even to Shri Nedou with whom he negotiated the deal”.

Why exactly there was need for this secrecy is not clear, unless it be that they wanted to keep it a secret from the general public till the lease was sanctioned. The question for consideration in the inquiry, however, is whether it could have been an information which was kept back even from the respondent. It seems to me that its object could have been served only if Bakshi Ghulam Mohammad did know of Yasmin's interest and Harry Nedou was being put forward as the ostensible transferee because he bore that name and that this was done in order to mask real beneficiary under the lease and that is what I understand this lady to say in the latter part of paragraph 8. Then she adds that she was told that Harry Nedou had experience in the business from the time of his father who was one of the partners. The fact was that Harry Nedou had not been in the hotel business at all. He had

been a personal assistant to the Maharaja of Indore and when he left that assignment, became Military Secretary to the Sadar-i-Riyasat of Jammu & Kashmir (vide discussion in allegation 35). The reply then proceeds to state that she knew Col. Harry Nedou very well, though on her admission she did not know anything about his financial position. She talked over the matter with her husband and suggested to him to make it possible for her to enter into a partnership with Harry Nedou and it is said that it was the husband who cautioned the lady not to mention this to anyone and that was why that Harry Nedou was authorised to negotiate the details with W. Nedou without disclosing her identity as a partner. She also adds that Harry Nedou was instructed not to mention the fact that she was interested in the lease or in the business, so that there was an agreement between Harry Nedou and herself not to exploit the respondent's official position.

20-21 From this reply a few things are clear---

- (1) The name of Yasmin Bakshi and her interest in the business and the lease was deliberately kept back from the officials and the general public;
- (2) that the entire finance required for the purchase of the goodwill from W. Nedou was provided by Bakshi Bashir Ahmed;
- (3) Yasmin Bakshi had either made no inquiries regarding the financial position of Harry Nedou or was aware that he had no money and that she alone had to provide the entire financial need, though she says she knew him well as a social figure; and
- (4) finally she had no idea of his experience or inexperience in the hotel business or knew of his inexperience but thought it necessary to have him as a partner though he had no money nor experience for the reason that he had the name Nedou.

The admissions, therefore, in this reply and the inference flowing therefrom would indicate that the name of Harry Nedou was used for the purpose of serving as a cover for a business venture of Bakshi Bashir Ahmed and his wife and that that name was used because there had already been notings in the departmental files and decisions based on it in 1958 and 1959 that it was in the interest of the State that the lease should be held and the hotel business conducted by the Nedou's. It was, therefore, his name that was sought and obtained in getting Harry Nedou to join the partnership.

20.22. Now coming next to the reply of Bakshi Ghulam Mohammad, he states in paragraph 7 that not merely he but eight other Ministers, and among them five who formed the Government at present, were present at the meeting of 11th July, 1963 which sanctioned the lease. But as it is not suggested that they knew of the identity of the party to benefit by their decision, this is irrelevant.

20.23. The respondent invokes some doctrine of estoppel against the present Government from impugning the propriety of the lease, but I am not able to follow the reasoning on which it is based.

20.24. After dealing with some other matters which are not relevant to the merits of the charge, he refers in paragraph 13 to five other leases in which the renewals had been granted for 20 years. The five instances given by the respondent are all cases of leases of Nazul lands on which the lessee had constructed his own buildings. As vacant land had been let for the construction of buildings, if the lease were not renewed, Government have under the Nazul Rules to pay compensation for the value of the structures erected by the lessee. Besides, in the case of the leases under the Nazul Rules, the lessee has to pay ground rent on the extent of the land leased and it would be apparent that in the case of the lease of Nedou's no ground rent was charged for the land, as it was not treated as a lease of land under the Nazul Rules. The case on hand, however, is not a lease of land for building purposes, but a lease of a building constructed by the Government to be used for a specified commercial purpose. The other instances, therefore, are not in *peri materia*. But the more serious point made by the learned counsel for the Government was that so far as these buildings are concerned, ever since they were constructed and let in 1888 and 1900, they had never been let for a period of 20 years, the duration of the longest lease having never exceeded 10 years. In the face of this history, the question which has been raised is what necessity was there to grant a lease for 20 years and this, it should be remembered, after what had happened to an application for renewal made by W. Nedou of Nedous & Sons when the lease expired in 1958-59. It was with great difficulty that the lease was extended just for a year and then for another year and the matter kept in suspense and finally after considerable delay renewed for a period of five years. Now during the subsistence of that lease an anticipatory lease is granted and for a period of 20 years. It is this that is pointed out as out of the ordinary for which there must be some justification made out if a memorandum had been submitted to the Cabinet.

20.25. I have already dealt with paragraphs 15 and 16 of this reply and nothing more need be said about them. In paragraph 18 he disallows all responsibility for any irregularities in the processing and denies a suggestion that he made it known to his colleague Mr. Shamus-ud-Din that he was interested in the matter and that it was for this reason that the irregularities took place. Under the Rules of Business the power to include items in a supplementary agenda vests in the Prime Minister and on this was based a suggestion that it was included in the supplementary agenda as item No. 5 because of his interest. He denies this, however, in paragraph 21 and says that though the rule is as stated yet in practice, it was a routine matter and that what was obtained from him was merely a formal sanction. In paragraph 22 he states that it was for the Works, Irrigation and Power Ministry which dealt with these objections to see that the proper procedure was followed and that he could not be held responsible for the Development Department not processing these applications. He then adds that all the Ministers including the Finance Minister were present at the Cabinet meeting

and hence as the lease was granted as a result of a decision obtained at this meeting, no question of abuse of official position by any Minister individually could arise. The conclusion does not follow—for if, as I show later, he alone knew of Yasmin Bakshi's interest, the acquiescence of the other members of the Cabinet—who did not know of the respondent's interest in it—is explicitly on foot of their belief in his suggestion as to the need for the long term lease. Their concurrence in the proposal, therefore, affords no answer to the respondent, for the charge here is of abuse of power and not one of negligence in the management in the affairs of the State ; and abuse comes in only if he with knowledge of interest of his relation in respect of a matter, he was guilty of a deliberate non-observance of the rules to the prejudice of the State and to the benefit of his relation. For what is suggested by learned counsel for the Government is that he alone knew of Yasmin's interest and that that was the motive force for this departure, and this matter was brought up before the Cabinet without any proper memorandum, with nothing to indicate which Department had processed the application, or whether it had passed through the Development Department, whether the Finance Department had been consulted. It was besides brought in on an agenda whose terms, as I have already set out, did not bring out the duration of the lease which was sanctioned. When the respondent goes on in paragraph 23 to advert to the note of the Development Secretary dated 6th December, 1958 (Document 21 in this allegation) he does not improve his defence because what was stated against him was that advantage was taken of the name of Nedous and that the lease was granted in the name of Harry Nedou though he had not been in the hotel business and the partner who was to finance the business was none other than the respondent's son or daughter-in-law.

20.26. In paragraph 24 the respondent refers to the recommendation of the Ministry that the lease be renewed for 20 years, but I see nothing in the documents to suggest that there was any recommendation in this as to the duration. In Document 2 which is the application by Harry Nedou he prayed for a renewal for a period of 40 years from the date of the expiry of the current period of the lease. When this application was forwarded to the Chief Engineer, in his notings (Documents 3 and 4) the Chief Engineer left it to the Government to decide (a) as to whether it should be renewed and (2) as to its duration if renewal was agreed to when finally these were forwarded by the Minister Mr. Shamus-ud-Din to the respondent, he never made any suggestion as to the duration but forwarded merely the applications together with the reports of the Chief Engineer and it was this personal letter addressed to the respondent that was treated as the basis for the consideration of the item in the supplementary agenda. It was only at the Council meeting that a decision was reached that the lease should be renewed for 20 years. He is, therefore, not correct in stating that there was some recommendation of the Ministry that the lease be renewed for 20 years.

20 27. Paragraph 27 deals with the crux of the matter and in this he says that he has no knowledge of the agreement, oral or written, between Yasmin Bakshi and Col. Harry Nedou and that no one mentioned to him regarding the existence of this partnership—neither Nedou nor

Bakshi Bashir Ahmed. Of course, as regards this matter there is no documentary evidence to establish Government's case, but it is merely a matter of inference.

20.28. I shall now proceed to examine in some detail the credibility and acceptability of the story of Mrs. Yasmin Bakshi that her interest in the lease negotiated by Harry Nedou was kept secret from the respondent and the corresponding denial by the respondent of his knowledge of her interest in the lease and in the hotel business.

20.29. I shall start by referring to the sort of feelings and relationship between Harry Nedou and the respondent according to the latter. I refer to his reply to Allegation 35 and I quote—

“... On the fall of the Sheikh Abdullah Ministry this respondent was called upon to form a new Ministry. Colonel Ghulam Qadir is the brother-in-law of Sheikh Sahib and during Sheikh Sahib's Premiership was functioning as the Military Secretary to the Sadar-i-Riyasat. Consequent upon the formation of the new Ministry headed by the respondent and for the political situation then obtaining as an aftermath of the fall of the Sheikh Ministry it was considered not advisable to retain Col. Ghulam Qadir as the Military Secretary to the Sadar-i-Riyasat by the then Ministry and this respondent advised the Sadar-i-Riyasat accordingly. In the result Colonel Ghulam Qadir was asked to relinquish the post. In the atmosphere of antipathy between the respondent and Sheikh Sahib's family and relatives, and aggrieved as the Colonel was at the hands of this respondent as being responsible for his dislodgement from the office of the Military Secretary, it was not conceivable that Colonel would see this respondent...”

Whether or not this exactly corresponds to the truth, one thing is clear that Harry Nedous was by no means his close and intimate friend. It was this person who met the respondent on 15th June, 1963 and immediately obtained the promise of favourable orders on his request, as seen from the contents of Document 5. In contrast with this it might not be irrelevant to refer to the difficulty which Nedou & Sons experienced from 1959 to 1961 to have the lease renewed, even for five years. As this has already been set out I am not repeating it. During all the time we find that Willie Nedou, who was carrying on the business of Nedous & Sons, never thought that any advantage would be gained by personally meeting the respondent. The matter proceeded only on the basis of formal correspondence with the Secretariat. Nor was it then thought that the intervention of Harry Nedou would be worthwhile or be of help and Harry never met the respondent in that connection. But in contrast we find that immediately after Mrs. Yasmin Bakshi became interested, the application is presented in person by Harry Nedou who on the respondent's admission was not very much personal grata with him, and more than that a prayer is made in it for renewal of the lease for 40 years from the termination of the earlier lease and this in the face of the hurdles which an application even for a five year term which attended the earlier application of Nedous. In this connection it might

be pointed out that on no previous occasion had Messrs Nedous & Sons summoned courage to ask for a lease for a term of 40 years. The respondent must evidently have received Harry Nedou with great cordiality for according to Document 5 he immediately promised him favourable orders on his application—an attitude which is strange and hardly consistent with the feelings which the respondent states in the passage quoted existed between them. I am unable to explain all this except on the footing that the respondent was well aware of Mrs. Yasmin Bakshi's interest in the proposed lease, and that Harry Nedou was approaching him on behalf of Mrs. Yasmin Bakshi.

20.30. That is one aspect. Besides I cannot ignore the amount of interest that the respondent was taking in promoting the business of his son Baskhi Bashir Ahmed. Then we have the statements of Yasmin Bakshi that she keenly desired her interest in Harry Nedou's application to be kept secret. Of course, she says knowledge of it was kept back from the respondent, but she does not say that if it was disclosed to him, her scheme to obtain the lease would have been frustrated. Now, if everything was above board, it passes one's comprehension as to why there was need for such secrecy. If her interest had been disclosed and with full knowledge of it, her application had been considered on the merits and sanctioned, there would have been nothing improper in her obtaining a lease, the only risk was that the terms of the lease might not possibly be as advantageous to her if there was a full scrutiny by all the concerned departments. If then it was to avoid this, that she decided that the matter should be kept secret, it stands to reason that her object could not have been achieved unless the respondent was one of those who had to be taken into confidence, because it was after all with his consent that her object could be fulfilled. In these circumstances I am clearly of the opinion that the statement of the respondent that he was kept in ignorance of the financial commitment of Yasmin Bakshi to the extent of Rs. 3,30,000/- and of the fact that Harry Nedou when he called on Bakshi Ghulam Mohd. personally and handed over to him Document No. 2, did so not only on his own behalf but on behalf of Yasmin Bakshi as well are both untrue. I, therefore, hold that the respondent was aware of the agreement between Yasmin Bakshi and Harry Nedou for the purchase of the business of Nedou's & Sons even before the 15th June, 1963. I also accept the contents of the statement in Document No. 5 dated 29th June, 1963 that when the applications were presented to the respondent personally as admitted by him, he had assured him that the transfer of the lease to Harry Nedou should be sanctioned. It is admitted by Yasmin Bakshi that Harry Nedou was authorised to represent her not merely to negotiate the purchase but to apply to the Prime Minister to get the transfer as well as the renewal of the lease. This answer to the two persons who came and met him on 15th June, 1963 is consistent only with the respondent's previous knowledge of Yasmin's interest in the purchase to be effected and the lease to be sanctioned, for otherwise one could not understand why he should make a promise or give an assurance in respect of a matter pertaining to another Ministry and which even according to him required Council sanction. The question of granting the lease was, as admitted by the respondent himself, a matter which primarily concerned the Works Ministry under Mr. Shamus-ud-Din, but we find Documents 1 and 2 addressed to the

Prime Minister and presented to him personally. Even when he receives them, he personally hands them to Mr. Shamus-ud-Din. This I am stating notwithstanding his denial because of the circumstance that these two petitions are not forwarded to his Department for being diarised. Mr. Shamus-ud-Din in his turn does not have them diarised either and processed in his Department, but sends them to the Chief Engineer for a report and when they come back with the report (Documents 3 and 4), he makes no comment on them himself, but merely forwards them to the respondent "for favour of further action" though they pertain to his own Department. And then two matters arise for comment : (1) The speed with which matters proceed compared to the manner in which the question of renewal was dealt with when Yasmin Bakshi was not on the scene between 1959 and 1961, and (2) the manner in which it was put upon the agenda and passed, and there was nothing in the files to indicate that any stranger was taking over which in fact was what was happening.

20.31. In view of these features for which I find no adequate answer, I hold that the charge has been established and that there has been an abuse of power on the part of the respondent in making this grant of a lease of this business to his daughter-in-law as charged in Allegation 20.

20.32. The amount of benefit which Yasmin Bakshi has derived as a result of the lease thus obtained is not easy to evaluate. Learned counsel for the Government tried to obtain the figures of the balance sheets of the years immediately preceding 1963 in order to ascertain the profitability of this concern. When addressed, however, the then proprietors of Messrs Nedous Hotel stated that all records prior to the 31st October, 1963 were with W. Nedou who was stated to be in Lahore and, therefore, not available. In regard to the period after the 1st November, 1963 a further letter was addressed to the firm but their answer was that their balance-sheets and books of accounts were with their auditors and, therefore, could not be made available. In these circumstances, I can proceed only on the basis of an estimate of the probable profits which accrued to Yasmin Bakshi by this transaction. The amount advanced by her for the purchase of the goodwill etc., as seen already, was Rs. 3,25,000/-. The minimum which she would expect from this advance would be Rs. 60,000/- per year made up of 9% for interest on her advance plus 10% on her investment as profit and as the lease is to run for a period of 20 years, if capitalised this would mean, say at 10 years purchase, Rs. 6 lakhs.

21.1. We now come to the major benefits stated to have been obtained by Abdul Rashid and his group with which are concerned the charges in Allegations 9, 10 and 19. Abdul Rashid besides being a close relation of the respondent was also the General Secretary of the National Conference which was then the ruling party of which the respondent was the leader. Possibly owing to his preoccupation with his political work, Abdul Rashid had not been able to take any great interest in the business activities of the family, with the result that he had to be content with just an one-tenth share in the profits of Feroze & Co. I have already pointed out that with the diversification in the activities of this parent

firm several concerns had sprung up doing business in various lines and in which the main participants were Bakshi Bashir Ahmed, Bakshi Abdul Majid and Bakshi Ghulam Nabi. In the case of Abdul Rashid, except that his brother Ghulam Ahmed was a partner in a few of the minor undertakings, his interest appears to have been almost negligible. It is possible that this was responsible for the streak of bitterness which is evident in the statements on solemn affirmation which he made before Mr. J. N. Bhat to whom the family disputes had been referred for arbitration. He then said—

“For some time past the partners have become suspicious of one another and the other partners have come to doubt the *bona fide* and the methods of business of the prominent partners which is liable to create disputes. . . . I am so fed up by the method of the working of this partnership that I do not want anything except to get myself released from it.”

Though all the members of the family made statements before arbitrator, Abdul Rashid was the only one who displayed this bitterness about his erstwhile partners and disgust at their methods of business.

21.2. Nevertheless he was a party to the arrangements by which the partnerships were dissolved but by reason of the dissolution, as already pointed out, he got no business allotted to himself and even by way of cash, got very little as compared to the lucrative businesses which were allotted to the others. These circumstances were relied by Learned Counsel for the Government for probablising the suggestion that his withdrawal from the partnership on the terms found in the award must have been made possible by a promise by the respondent that he would be provided with some business bringing in decent income and that it was in fulfilment of this promise, that the two petrol pumps which are the subject-matter of Allegations 9 and 10 and the ESSO agency and the oil carriage contract referred to in Allegation 19 (the last of which brought him an income of over Rs. 6,000/- a month) were made available to him. This suggestion which is plausible has been denied by the respondent as also by Abdul Rashid himself in the replies they have filed to these three allegations.

21.3. With these observations, I shall proceed to deal with the facts in relation to the charges contained in Allegations 9, 10 and 19, in that order.

21.4. The notification in respect of the charge contained in Allegation 9 reads thus:

“6 kanals and 8 marlas of land (34,500 Sq. Ft.) were carved out of the premises of Nedous Hotel, Srinagar, which was already on lease with M/s Nedou and Sons and was given on lease for 40 years on 29-12-1960 to Shri Ghulam Jeelani, minor nephew of Bakshi Ghulam Mohammad, at the rate of Rs. 20 per marla per annum without any premium, and in violation of the rules, at the instance of Bakshi Ghulam Mohammad

who was then the Prime Minister of the State. The Electric Sub-Station which existed at the site was dismantled and shifted to another place at Government expense, as desired by Bakshi Ghulam Mohammad."

21.5. An analysis of this allegation indicates that the following are the points sought to be made :—

- (1) That the piece of land which was already included in the lease to Messrs Nedous for the Nedous Hotel was taken away from them in order to accommodate Abdul Rashid.
- (2) That the land thus obtained was leased to his son who was then a minor.
- (3) That no premium was charged for this lease of Government land which was contrary to the rules.
- (4) That an electric sub-station which was on the land which was the subject of the lease was removed therefrom and rebuilt on another land at Government expense.
- (5) That all these were done at the instance of or under the direction of the respondent.

21.6. The narration of the following facts would make it easier for the charge to be comprehended and the case in relation thereto better appreciated. The property on which the Nedous Hotel building was constructed belonged to the Nazul Department of the Government. The Government had themselves constructed these buildings in or about 1890 and ever since then, the buildings had been under lease to Messrs Nedous for running a hotel, with a view to encourage tourism. The lease was about to expire in April, 1960, and the firm of Nedous had made applications for the renewal of the lease, but this had not been finally decided. This renewal had to be ordered by the Council of Ministers, and they decided on 13th January, 1960 in favour of renewing the lease for five years till April, 1965, but with a proviso, that orders in relation thereto would be issued only after the Prime Minister (the respondent) had discussed with the lessees the question of the renovation of the furniture and fittings by them and had obtained an undertaking from them concerning the renovation. This Cabinet Resolution was not communicated to the lessee, nor did the respondent take the action suggested in the resolution immediately but meanwhile, in order to prevent eviction of the lessee on the expiry of the term, the lease was informally extended for a year, to the end of March, 1961 (Document 2, date 13th May, 1960).

21.7. It was at this stage that we have an application by Ghulam Jeelani son of Abdul Rashid (a minor then aged about 14) addressed to the Divisional Engineer, Construction Division, Srinagar for the grant to him of "a suitable site" without any specification of the place for installing a petrol pump (Document 3). The application purports to bear the signature of Ghulam Jeelani, claiming to be the representative of

Standard Vacuum Oil Co. (Stanvac) and describing himself as the proprietor of The Commercial Oil Company Srinagar. It bears the date 10th September, 1960, but the genuineness of this date has been disputed, particularly for the reason that the Commercial Oil Co. was appointed as distributor of Stanvac only under an agreement dated 1st October, 1960 (vide Document 10 Allegation 19), a suspicion which is reinforced by certain features found in the receipt register in which Document 3 was diarised. Document 3 has entered on it the diary No. 7894 and the date 10th September, 1960. In the Receipt Register (Document 6), however, the entry in relation to this document is the first entry on the page which is ruled and is written above the line, below which along normally entries are made and is given the number 7894A and not 7894 on the date 10th September, 1960. All the other entries on this page which are written in the space normally reserved for entries show over-written corrections in the diary numbers. Thus the next entry is corrected from 7894 to 7895—5 being overwritten on 4; the next after that, corrected by similar overwriting from 7895 to 7896 and the one following from 7896 into 7896A. This type of correction would keep intact the numbers on the previous and succeeding pages. I am, therefore, satisfied that Document 3 was not received on 10th September, 1960.

21.8. Before any action was taken on this application, Messrs Standard Vacuum Oil Co. themselves applied on 1st November, 1960 to the Divisional Engineer (Document 5) enclosing three copies of plans (Document 7) for the erection of a petrol pump by the Commercial Oil Co. on the Nedous site and requesting for a "no objection certificate". This proceeded on the basis that this site had been selected and was being sanctioned. It appears to me that the entedating of Document 3 was with a view to make it appear that it preceded Document 5, but I do not attach much significance to this feature, except that it is some indication that things were not above board and that a conscious attempt was made to make it appear that the matter was proceeding according to the usual routine, though there was a patent inconsistency between Ghulam Jeelani as agent of Stanvac asking for allotment of a "suitable site" and Stanvac proceeding on the basis of Jeelani having selected and applied for the site in Nedou's Hotel compound.

21.9. Document 3 was not noted on or processed in the Divisional Engineer's office, but the Divisional Engineer forwarded a copy of it to the Chief Engineer (Document 4 dated 16th November, 1960) recommending the allotment of the site near Nedous to the applicant, stating that the site had been recommended to the Kashmir Oil Co. a concern of Abdul Majid) but as they had applied for a different site (see Allegation 11), this one was available, adding that the matter had been discussed with Nedous who had agreed to the location of the site on the land under lease to them.

21.10. This brings me to one of the points urged by Mr. Khambata, which needs to be considered. It was said that the question of the renewal of the lease of Nedous Hotel was kept pending and that though the Cabinet had sanctioned a five year renewal up to April, 1965, the same was not communicated to the lessee, and that the respondent who had been entrusted with the duty of getting an undertaking from the

lessee as regards the renovation of the furniture and fittings which was made a condition for the grant of the renewal had purposely not taken any action in order to keep the lessee in suspense. The further submission was that the respondent took advantage of these circumstances, in order to coerce the lessees into agreeing to the cutting off of a portion of the compound included in their lease for providing a site for the petrol pump.

21.11. In support of these submissions reliance was placed on the affidavit of W. A. Nedou, who spoke of the threat to him by Bakshi Abdul Majid who, it is said, told him that his application for the grant of renewal which was then pending with the Government, would be disposed of unfavourably to him, in the event of his not agreeing to the proposal for giving up a portion of the land for the petrol pump site and that because of this pressure he yielded. The version of Mr. P. N. Wanchoo, Chief Engineer, Public Works Department, and of Mr. Malhotra, the then Divisional Engineer who claim to have met Mr. Nedou and sought his permission does not fit in exactly, with this. In any event, there is nothing even to suggest that the respondent met Mr. Nedou, or that he communicated through anybody his desire that Mr. Nedou should yield. Even if it be held that Mr. Nedou felt pressurised on foot of his statement being accepted, which I am not for the reason that he has not been examined, there is nothing on record to establish that the respondent exerted that pressure, directly or indirectly.

21.12. To resume the narrative, hardly had Document 4 dated 16th November, 1960 been received by the Chief Engineer than things began to move rapidly. There was no noting on or processing of this recommendation in the Chief Engineer's office either but on the 18th, the Chief Engineer, Mr. P. N. Wanchoo forwarded a copy of the application of Jeelani (Document 3) to the Secretary to Government, Development Department enclosing the recommendation of the Divisional Engineer for the grant of the site, for the reason that there was a shortage of petrol Pumps and desiring that sanction may be communicated. Along with this letter he enclosed a copy of the site plan which appears to have been one of the three which had been filed by the Stanvac when they applied for the grant of the site to Commercial Oil Co. (Vide Document 5). To the contents of this plan reference will be made later, but after I complete the narrative.

21.13. The Chief Engineer's letter was noted on in the Development Department on 30th December, 1960 (Document 11). The note to the Secretary drew his attention to the letter of the Chief Engineer and pointed out that the rent of the land would be Rs. 30/- per annum per marla (total Rs. 325/- per month) and that the grant of the lease would require Cabinet sanction and solicited orders if the case may be submitted to the Cabinet for sanction. This note having been placed before the Secretary, he noted on it on the same day (30th December, 1960) that he had discussed the case with the Revenue Secretary who informed him that the grant of the lease would require Cabinet sanction, and that before submitting it to the Cabinet, the nature of the land etc. would have to be verified from the Revenue Department. He also stated that the Revenue Department might be asked to state, if they had any

objection to the leasing of the land to the firm, for the purpose for which it was desired. It might be mentioned that these formalities are the requirements of the law.

21.14. Before, however, any of these steps could be taken, the matter had already been brought up before the Council of Ministers on 29th December, 1960 and a decision recorded that the "piece of land belonging to Government in the premises of Nedous Hotel Srinagar which was on lease to Messrs Nedous Hotel (34,500 sq. ft.) be given to Commercial Oil Co. (Proprietor Shri Ghulam Jeelani) for putting up a petrol pump and service station. Necessary agreement of the present lessee (Messrs Nedous Hotel) for this transfer has already been obtained, and the Law and Revenue and the Development Ministers had already agreed to this. The rate of rent for this piece of land will have to be the same as provided in the Land Grants Rules, sanctioned separately." (Vide Document 13).

21.15. It would be noticed that the Council resolution extracted above did not specify the period of the lease, nor the premium or the rent to be charged, but these were left to be decided in accordance with the Land Grants Rules, and it is the contention of the Government that the grant of the lease and the terms thereof were both in violation of the law.

21.16. Before dealing with the infraction of the Land Grant Rules, I have to refer to certain matters relating to the manner in which the Council's decision was obtained, which is relied on in support of the charge. The agenda for the Cabinet meeting which was held on 29th December, 1960, is that contained in Agenda 16/1960. The subject of the grant of the lease to Jeelani for the petrol pump was not on the agenda, but item 89 referred to "the renewal of the lease of the Hotel Buildings in Srinagar and Gulmarg to Messrs Nedou & Sons for a period of 5 years from 13-4-60 and 1-1-60 respectively.....etc." (vide Document 17 which is the respondent's copy of the agenda). The memorandum which was circulated to the Ministers in relation to this item on the agenda is Document 12. This was prepared by the Development Department and is dated 20th December, 1960. After setting out facts in relation to the application by Messrs Nedous & Sons for renewal of the lease of the Hotel buildings it submitted to the Council a resolution which if adopted would sanction the renewal of the lease for a term of five years from 1960. It is on the basis of this item in the agenda that the resolution in relation to the lease to Nedous was passed, approving the proposal for renewal of the lease but adding that "orders should be issued only after the Prime Minister had taken a commitment in writing from the proprietors of the Hotel for the renovation of the furniture and fittings therein."

21.17. The Council decision, however, did not stop with this, but proceeded in the second paragraph to sanction the lease in favour of Jeelani in the terms already set out.

21.18. I entirely agree with the submission of Mr. Khambata that the second paragraph of the decision relating to the grant of lease to

Ghulam Jeelani had nothing to do with the proposal regarding the renewal of Nedou's lease contained in item 89 of the agenda, which was the only matter on which there was a memorandum which was circulated to the members of the Cabinet. The suggestion by the respondent in paragraph 21 of his reply that this was a matter "ancillary to the renewal of the lease" is entirely without substance and has only to be stated to be rejected. It was really an independent subject, a grant for a different purpose and in favour of a different individual, where land was being granted on lease for building purposes regarding which different considerations applied. The subject not being on the agenda, and there being no memorandum on the subject, it is reasonable to assume that the Ministers present could not have known anything on the subject.

21.19. At this point it is necessary to refer to the rules governing the procedure for the transaction of Government business by the Council of Ministers. In line with the corresponding provisions applicable to the States and the Union under the Constitution of India, section 43 of the Constitution of Jammu and Kashmir empowers the *Sadar-i-Riyasat* to make rules concerning the transaction of the business of the Government of the State and for the allocation among Ministers of the said Government.

21.20. Rule 9 of these rules provides that "subject to the orders of the Prime Minister under Rule 15, all cases....shall be brought before the Council (of Ministers) in accordance with the provisions of the rules....."

"Provided that no case in regard to which the Finance Department is required to be consulted under Rule 11, shall save in exceptional circumstances, under the direction of the Prime Minister, be discussed by the Council unless the Finance Minister has had an opportunity for considering it."

21.21. Rule 11 referred to here provided that—

- (i) No Department shall *without previous consultation* with the Finance Department authorise any orders (other than orders pursuant to any general delegation made by the Finance Department) which (a) either immediately or by their repercussions will affect the finances of the State or which, in particular—

- (1) *involve any grant of land.....or*

- (2) subject to the general provisions of rule 9, no proposal which requires the previous consultation of the Finance Department under this rule, but in which the Finance Department has not concurred, and the Finance Minister has agreed with the Finance Department, may be proceeded with unless a decision to that effect has been taken by the Council."

Besides, Rule 35 provides—

“The Finance Department shall be consulted before the issue of orders upon all proposals which affect the finances of the State”.

and Rule 36—

“The views of the Finance Department shall be brought to the permanent record of the department to which the case belongs and shall form part of the case.”

21.22. Giving effect to these provisions the Kashmir Book of Financial Powers provides—

“3.9. No Department shall without previous consultation with the Finance Department authorise any orders (other than orders pursuant to any general delegation made by the Finance Department) which either immediately or by their repercussions will affect the finances of the State or which in particular :-

- (a) involve any grant of land or assignment of revenue or concession, grant, lease or license of mineral or forest right or a right to water power or any easement or privilege in respect of such concessions ;

21.23. The manner in which a matter is to be brought up before the Council is thus set out in Rules 18 and 20(2) and (3).

18. “When it has been decided to bring a case before the Council, the department to which the case belongs shall, unless the Prime Minister otherwise directs, prepare a memorandum indicating with sufficient precision the salient facts of the case and the points for decision. Such memorandum and such other papers as are necessary to enable the case to be disposed of shall be circulated to the Ministers.”

20(2) “After an agenda showing the cases to be discussed at a meeting of the Council has been approved by the Prime Minister, copies thereof, together with copies of such memoranda as have not been circulated under rule 18, shall be sent by the Secretary to the Council to the Prime Minister and other Ministers so as to reach them two clear days before the date of such meeting. The Prime Minister may, in the case of emergency, curtail the said report of two days. Copies of the agenda and the memorandum shall at the same time be sent to the Sadar-i-Riyasat.”

20(3) “Except with the permission of the Prime Minister no case shall be placed on the agenda of a meeting unless papers relating thereto have been circulated as required by rule 18.”

21.24. Thus if a matter was not in the agenda like the one we are now concerned with, it could have been brought up before the Council only at the instance of the Prime Minister.

21.25. Besides, there is another circumstance which has to be taken into account. I have already referred to the fact that after the application of Jeelani reached the Development Secretariat by the Chief Engineer writing to the Secretary, it was still being processed (vide Document 11) and even before the Development Secretary could seek the opinion of the Revenue Secretary whether the Revenue Department had any objection to the proposed lease (this was on 30th December, 1960), the Council resolution had been passed the previous day. There was, therefore, no possibility of the application of Jeelani being known to the officials other than the officers of the Engineering Department, nor even to the Chief Secretary, because the file was still in the Development Department. In these circumstances, Mr. Khambata urged that it was the respondent and he alone who could have known of this application at the Cabinet meeting, and having regard to Rule 20(3) of the Rules of Business, he alone could have introduced the subject at the meeting.

21.26. In this context, reference was made to a statement in the affidavit of the Chief Engineer Mr. P. N. Wanchoo, that the respondent handed over to him three typed applications two of which were unsigned, purporting to be on behalf of Ghulam Jeelani (Document 3). Mr. Wanchoo added that the respondent signed the third application as G. Jeelani. This last statement I refuse to accept, as there is nothing to corroborate or substantiate it, and besides the handwriting expert does not support this (vide Document 27), though he states that the signature is not that of G. Jeelani. But in so far as Mr. Wanchoo speaks of the application being handed over to him, I am prepared to accept this statement notwithstanding the denial by the respondent, since there is nothing disclosed by the respondent in his reply as to any other source from which he could have information regarding this application, the name of the applicant, the name of the firm of which he claimed to be the proprietor, the location of the site and the purpose for which the site was needed. Document 3 which purports to bear the signature of Ghulam Jeelani in whose favour the Cabinet sanctions the grant of a lease, does not contain any description of him to identify him, by setting out his father's name etc. and the Commercial Oil Co. of which he is said to be the proprietor, is a name which came into existence only at the time of this document. In the circumstances, the contention of the Government that the respondent alone among Ministers could have known the identity of the applicant, and of the existence of his application appears to me to be well-founded.

21.27. There are a few other circumstances to which reference was made in regard to the proceedings of the Council to which I should advert. First, under Rule 11 of the Rules of Business, questions involving the grant of land, which would include leases have normally to obtain the concurrence of the Finance Department before the proposals are placed before the Council of Ministers. In cases where they did not obtain such concurrence, the views of the Finance Department

have to be ascertained, so as to acquaint the Cabinet with the financial implications involved. Under the proviso to Rule 9 of the Business Rules extracted earlier, the matter could be discussed in the Council even if the Finance Department had not been consulted only if the Prime Minister so directs, and the Finance Minister being present has had an opportunity of considering the matter. At the date when the resolution in relation to this lease was sanctioned, i.e. on 29th December, 1960, the respondent was himself the Finance Minister, and it was his concurrence that made up for the lack of consultation with the Finance Department.

21.28. The next circumstance to which my attention was drawn was, that the application was made to and entertained by the Public Works Department, though admittedly the land was Nazul land and the Nazul Department, that is the Department of Revenue, had never any say in the matter of the grant. It would be noticed that in the Development Secretariat, after the Divisional Engineer and the Chief Engineer had both made recommendations favouring the grant, a proposal was made to forward the papers to the Revenue Department for ascertaining their views, but this proposal came too late as even before it was mooted, the Cabinet had sanctioned the lease. Mr. Khambata, therefore, suggested that without the direction of some one at the top who was interested in the application being granted, this could not have happened and I see considerable force in this submission.

21.29. Lastly, it was pointed out that the timing of the application and the grant of the lease, have a significance in relation to the affairs of the members of the different groups of the respondent's family. Mr. Khambata pointed out that under the award of Mr. Bhat (Document 30), most of the tangible assets and businesses which were profitable were allotted to the group of Abdul Majid and Bakshi Bashir Ahmed, and Abdul Rashid got very little, except an allotment of monies to be recovered from the Central Government as regards which a suit was pending. Out of the amount to be recovered less the expenses, one-third was directed to be given to Abdul Rashid, the other two-thirds being given in equal shares to Ghulam Nabi and Abdul Majid. It was submitted that there must have been an understanding that any deficiency would be made up by the respondent using his official position to secure advantages which would ensure pecuniary advantages and that it must have been in pursuance of such an understanding that the leases under this and the next allegation (Allegation 10) were granted in the name of the minor Jeelani son of Abdul Rashid. Under the award which practically gave effect to the agreement between the parties and gave it a legal form the arrangements thereunder were to be effective on and from 1st January, 1961—the previous partnerships being treated as dissolved as and from 31st December, 1960. Of course, the understanding referred to compensate Abdul Rashid is not to be found in the award, but this would not be conclusive, as admittedly (vide the discussion regarding Allegation 23) there were understandings between the parties which did not find mention in the award. The suggestion is attractive as being plausible, and as the same is an inference based on what are

admitted facts and circumstances, is not open to objection on the ground that there is no document in terms evidencing it. Though I see force in the submission, I should not be understood to have based my conclusions on my accepting this suggestion as true and established.

21.30. There were also certain other circumstances which were referred to by Mr. Khambata to reinforce his argument. The first of these was that the lease was sanctioned by the Cabinet on the very day when the rules under the Land Grants Act, 1960 were passed by the Cabinet, i.e. on 29th December, 1960. It was pointed out that there were several cases in which applications made very much earlier were held up for being deals with till after the rules were passed and in accordance with them, but in this case, without any processing by the Department, without there being even a trace of the application being before the Cabinet, the grant, was made on the very day the rules were passed. Though I see considerable force in the submission regarding the nature of the application, the absence of any noting on it and the same being before the Cabinet, I do not attach any great importance to the circumstance that the grant was sanctioned on the very day on which the rules were passed. Item 28 of the Agenda (16 of 1960) related to the rules, and after they were passed, the question of the grant of the lease was taken up and the same was sanctioned. If otherwise there was nothing illegal or improper in the decision to grant the lease at that meeting, particularly as the same is directed to be "in accordance with the Land Grants Rules," I do not see any irregularity arising from the coincidence of the dates, except that it possibly indicates that the respondent who desired to put it through, treated the matter as so extremely urgent as to brook no delay.

21.31. Some stress was laid on the fact that though Ghulam Jeelani was put forward as the proprietor of the Commercial Oil Co. when the application (Document 3) was filed and the Cabinet sanction was for the grant of the lease to him (and incidentally it might be pointed out that he himself executed the lease falsely stating that he was aged 18), still when the agency agreement concluded between the Commercial Oil Co. and Stanvac was actually executed, Ghulam Jeelani's name did not appear as the proprietor of Commercial Oil Co., but Ghulam Ahmed claiming to be the sole proprietor of the concern signed the agreement regarding sale of gasoline in 1960, and the later agreements of 1961 with the oil company were signed by Ghulam Ahmed and Mrs. Abdul Rashid as partners of the agency firm (vide Document 26). It was suggested that minor Ghulam Jeelani's name was put forward in order to conceal the identity of the real lessees, and that this was a device adopted by Abdul Rashid, and the respondent to avoid any suspicion of the lease being granted to Abdul Rashid. No doubt this is plausible, but nothing more. The only persons, however, who could have thrown light as to why the minor Ghulam Jeelani was originally put forward as the proprietor, and why later others claimed to be proprietors of the Commercial Oil Co. were Ghulam Jeelani himself and the subsequent proprietors. Both Ghulam Jeelani as well as Ghulam Ahmed have filed statements, but neither has attempted to solve the mystery. I do not, however, consider it necessary to solve it. One thing is clear that the group of Abdul Rashid was always in the picture by his son or wife,

and his brother along with him, and that is all that the Government is interested in showing.

21.32. Learned Counsel also referred to this circumstance of the change in the composition of the proprietorship of the Commercial Oil Co. to make a point that this amounted to a transfer of the lease-hold interest by Ghulam Jeelani to others and that as it was without the previous consent in writing of Government, it was a violation of the terms of the lease, in regard to which no action was taken in accordance with the lease terms, it being suggested this was due to the action or influence of the respondent. There are, however, more answers than one to this submission. In the first place, it has not been established that the concerned officers of Government were aware of the changes in the proprietorship of the Commercial Oil Co. That apart, I do not think it is comprehended in the charge as notified which the respondent was called on to meet in this enquiry. For these reasons, I consider, that Learned Counsel for Government is not entitled to bring this up in connection with Allegation 9.

21.33. It will be recollected that the Cabinet resolution directed the lease to be granted under the Land Grants Rules, 1960, and it is submitted that the lease as granted was not in accordance with these rules. This takes me to these rules which were passed by the Cabinet on 29th December, 1960 under the Land Grants Act, 1960. Before referring to this statute and the rules, it would be useful to detail the prior law on the subject which was amended and codified by this legislation, as the effect of the statute on the previous is one of the matters that require to be considered.

21.34. The law relating to the grant of Government lands for buildings purposes was originally contained in rules framed under Resolution 2 of 1905 which applied to the towns of Srinagar and Gulmarg. These rules provided for the acquisition by the State on payment of compensation of those lands which were recommended for the purpose by certain named authorities as fit for allotment for building purposes. Thereafter persons desiring to occupy plots on such land could apply to the Government specifying certain relevant particulars. On the application being accepted, the lease of the plot was deemed to be complete. The term of the lease was ordinarily to be 40 years in the case of lands of Srinagar, subject to renewal at the option of the lessee with the rent being revised at the time of renewal if considered necessary, the renewal being for a term not exceeding 20 years, further renewals on revised terms not being forbidden. If the lease was put an end to either by refusal of renewal or on the expiry of the term, the Government had to acquire the buildings on payment of compensation, for determining which procedure was laid down. The main condition of the lease was the payment of ground rent which the lessee had to undertake to pay and pay regularly. The other provisions of these rules are immaterial. It will be seen that these rules made no provision for charging any premium.

21.35. These rules underwent a revision in Smv. 1967, i.e. 1919 A.D. which applied *inter alia* to Srinagar. These new rules also

provided for an application by the person seeking allotment giving certain specified particulars.

21.36. Its clause 8 provided that where the land was within municipal limits, the consent of the President of the municipality had to be obtained and if the land was in the possession of any Department of the State, its consent had to be obtained. When the authorities found that there was no objection to the grant, it provided for the land being directed to be put to auction to determine the ground rent payable. Provision was, however, made for the ground rent being fixed on bases other than by auction, or on *ad hoc* basis, but the minimum rents payable were specified. The leases were ordinarily to be for a term of 40 years with renewal at the option of the lessee for a period of not more than 20 years.

21.37. These and several other rules were all repealed and replaced by a comprehensive and consolidating Act in 1960—The Jammu and Kashmir Land Grants Act, 1960 (Act XXXVIII/60) which applied in the first instance to certain towns including Srinagar. Under Section 4, the Government was empowered to determine the extent of land available for building purposes and to grant land on lease on “such conditions including those relating to premium and ground rent as may be prescribed.”

21.38. Section 9 enabled the Government “to make rules for carrying out the provisions of the Act,” which included *inter alia* the provision relating to the conditions of lease.

21.39. Section 10 is of some importance, in view of the construction which has been contended for by the respondent. It enacted—

“Section 10. Other modes of grant or transfer.

“Nothing contained in this Act shall preclude or be deemed ever to have precluded the Government from making any grant or other transfer of land or any interest therein, other than a lease under this Act.”

21.40. Section 11 enacted—

“11. Transfer of property Act Svt. 1977 not to apply to Government Grants :—

“Nothing contained in the Transfer of Property Act, Svt. 1977 shall apply or be deemed ever to have applied to any grant or other transfer of land or any interest therein heretofore made or hereafter to be made by or on behalf of the Government to or in favour of any person whomsoever; but every such grant and transfer shall be construed and take effect as if the said Act had not been passed.”

21.41. Section 13 effected a repeal of the entirety of the previous rules and regulations relating to the allotment of lands for building purposes with a saving regarding the incidents and terms of leases already

granted and it was in these terms :—

13. Repeal and savings.—

“The Rules for the allotment of Building Sites in Srinagar and Gulmarg, Svt. 1962, the Rules for Grant of Lands in Jammu and Kashmir for Building purposes (Ailan No.10 dated 7th Bhadoon, 1976) and the Rules for Grant of Land at Gulmarg and Pahalgam in Kashmir for Building purposes are hereby repealed. But nothing herein contained shall except as otherwise provided in this Act, affect any terms or incident of any lease granted under any of the aforesaid Rules.”

21.42. This Act came into force on 24th October, 1960.

21.43. The first question for consideration is the effect of this enactment on the powers of Government to effect leases of land for building purposes other than in accordance with the provisions of this Act. By Section 13 of the Act all the previously existing legislation empowering Government to effect leases and prescribing conditions thereof stood repealed. The result was that in so far as the powers of Government to effect leases of land rested on the rules or regulations, those came to an end on 24th October, 1960 and recourse could not have been had to them for granting leases thereafter. It is, however, suggested on behalf of the respondent that the Government had an inherent power to dispose of their property and that such a power would not be extinguished by the repeal effected by Section 13.

21.44. But assuming the correctness of this submission, it must be conceded that the subsistence of the power would be subject to competent legislation in that behalf. If Section 4 were read as a comprehensive code dealing with the subject of grant of leases of Government property for building purposes, it would be obvious that there could be no recourse to the concept of a residual power inherent in the Government to effect leases, apart from Section 4 and other rules made thereunder (compare *De Keyser's Hotel versus Rex* 1920 Appeal Cases House of Lords page 508). Is it such a code is the question next to be answered. It is in this context that Section 10 of the Act which I have extracted earlier assumes significance. That section saves certain powers of the Government really *ex abundanti cautela*, because practically the entire Act of which Section 4 is the operative and crucial provision deals only with leases and no saving of other modes of grant was really necessary. Besides in this saving, it appears to confine its operation to other modes of grant or transfer, i.e. other than a lease under the Act. This might be contrasted with the language employed in Section 11 which enacts that every grant by the Government shall have effect according to its tenor notwithstanding the Transfer of Property Act and the expression “grant” in this section is comprehensive to apply to leases as well.

21.45. It is, however, unnecessary for me to pronounce finally on the proper construction of this legislation for the reason that the Government have proceeded on the basis that notwithstanding the provisions of the Act, they had an inherent power to grant leases.

on such terms as they chose. If this were correct the result would be that in effect the Act has made little or no change in the law on the subject. As I am concerned here not with the correct interpretation of the Act and the rules as with the improprieties and misconduct if any, I shall examine the conduct of the respondent and others on the basis of their interpretation of sections 4, 10 and 13 being correct.

21.46. That brings me to the rules framed under Section 9 in accordance with whose provisions the lease to Ghulam Jeelani was directed to be granted. These rules which were passed by the Council on 29th December, 1960 were published in the State Gazette on 26th January, 1961. They were by Rule 1 to come into effect immediately and I shall assume as has been submitted by the respondent in his reply, even if I am not persuaded about its correctness, that the date it came into force was the 29th December, 1960, though according to the General Clauses Act of Jammu and Kashmir, rules come into force only on publication in the Gazette. By Rule 3 the Collector and the Financial Commissioner were entrusted with the duty of ascertaining the land available for grant. Rules 4 to 6 make provision for public auctions of the lands which are proposed to be granted on lease and prescribe the procedure therefor. The auctions are for ascertaining the premium for each plot of land. Rule 7 prescribes the conditions on which alone leases could be granted and among these it would be sufficient to refer to—

- (a) The term of the lease would be 40 years, subject to renewal at the option of the lessee for a further 40 years term subject to an overall maximum of 99 years.
- (b) Providing for the increase of ground rents at the time of renewal.
- (c) Prohibiting transfers of the leased land without the consent in writing of the Government or officer authorised in that behalf.
- (d) Provision for payment of ground rent at rates set out in rule 10, besides the premium which is to be determined by auction.
- (e) Covenant to pay all rents, rates and taxes.
- (f) Buildings to be erected within three years.
- (g) Construction to be maintained in good repair.
- (h) Indemnity to the lessor against damage caused by the lessee or his agents.

21.47. Rule 10 specified the ground rent payable for land in the several localities in the several towns of the State etc.

21.48. These are followed by statutory forms of leases under the Act setting out the covenants and stipulations contained in the rules.

21.49. Whether or not I am right in my construction of section 10, that Government had no power to effect leases of Government land for building purposes other than in accordance with the Act and in conformity to the rules framed thereunder, the Cabinet resolution of 29th December, 1960 directed the grant of a lease to Ghulam Jeelani "in accordance with the provisions of the Land Grants Rules, 1960," and these rules required—

- (1) that leases should without exception be granted only on payment of a premium ;
- (2) that the premium should without exception be determined by public auction ; and
- (3) vested the Government with no power to relax the above requirements.

21.50. This also is academic, since the Government have proceeded on the assumption that though the rules framed under the Act had normally to be observed in the grant of leases, still they were capable of being waived by the Government. The controversy between the parties in regard to Allegations 9, 10 and 11—dealing with leases of Government land for the erection of petrol pumps in favour of the relations of the respondent—has really turned on whether the waiving of the rules and the relaxation effected had been justified and whether even the formalities subject to which the relaxation was usually effected, were observed in these cases. I shall be pointing out later now after 1960 there were practically no leases granted without premium and that in cases where no auction was held to determine the premium, its amount was estimated by the Revenue and Finance Departments on the basis of what the land might reasonably fetch by way of premium, if put to auction.

21.51. In pursuance of the Cabinet resolution dated 29th December, 1960, a Government Order was issued on 19th January, 1961 (Document 15), sanctioning the grant of the land of 34500 sq. ft. (6 kanals 8 marlas as per site plan submitted by the Chief Engineer, Roads and Buildings, to Ghulam Jeelani for 40 years at the prescribed ground rent of Rs. 20/- per marla per annum and an agreement in terms of this Government Order was executed on 29th May, 1961 (Document 25). This lease was granted without any premium being demanded or paid and it was urged that this was in violation of the specific provisions of the Land Grants Rules under which it was necessary not merely that a premium should be exacted, but that the same should be determined by public auction. In this connection reference was made to the note dated 27th February, 1961 in the file in relation to the lease involved in Allegation 11 (document 28) in which mention is made to a directive of the Prime Minister (respondent) that "the grant of leases....will be made by the competent authority with the previous permission of the Prime Minister (respondent)". Further it is there stated that as the land was being leased for a commercial purposes, and the premium had not been fixed

by open auction, the concurrence of the Finance Department was necessary before issue of final orders. The requirement of Finance Department's concurrence was in accordance with item 7 on page 32 of the Kashmir Book of Financial Powers under which the Revenue Department could sanction leases of land for building or commercial purposes without Finance concurrence "on fixed rates of rent provided premium has been determined by public auction."

21.52. It was suggested by Government that if there had been an auction, the amount of premium would have been as much as Rs. 50,000/-, regard being had to the rates which were realised when auctions were held, but that there was no evaluation by the concerned Departments—the Revenue and Finance Departments—of the reasonable amount that should be fixed as the premium. It was submitted that this was not merely in flagrant violation of the Land Grants Rules, but wholly inconsistent with the practice in other cases, and that such huge benefits by a transgression of the plain terms of the rules would not have been granted to the lessee but for the solicitude which the respondent took in the whole affair.

21.53. I see considerable force in this submission. It is clear from the files that the procedure of an auction to determine the premium was not observed in a few cases, but the view which appears to have been taken in them by the departments and with which Government concurred, was that where an auction was not possible, or was considered not necessary and desirable, there was still need to demand a premium, and that in all such cases the quantum of premium was to be determined by the Revenue and Finance Departments on a fair estimate as to what an auction if held would yield. It is regrettable that in the present case, considering the extent of land in such a prominent locality as the Hotel Road on the National Highway, should have been granted on lease without a premium and I am satisfied that this infraction of the rule and the loss of Government revenue was due to the interest which the respondent took in having this lease granted.

21.54. The next matter related to the removal of the Electric Sub-Station that there was on the leased plot at the Government expenses, before the lease came into effect. This electrical sub-station was situated at the south-eastern corner of the plot leased out and abutting the Hotel Road which is a National Highway. This road which is part of the road from Lakhampur to Uri had been declared a National Highway in 1947. I have already pointed out that I entertained grave doubts if Ghulam Jeelani had applied on 10th September, 1960 seeing that the Stanvacs appointed the Commercial Oil Co. as their agents only on 1st October, 1960. The submission of Mr. Khambata was that when the respondent decided to get the land on lease for Ghulam Jeelani, he also saw to it that this obstruction in the shape of the Electric Sub-Station, whose existence would have been a source of danger to the petrol installation, was removed from the place and at Government expense. The dates when proposals for this removal were started, and the expedition with which it was carried out, appear to me to afford good foundation for these suggestions. On 29th/31st October, 1960 the Assistant Engineer electricity addressed a letter to the Electrical

Engineer, Srinagar (Document 20) pointing out that the Nedous Hotel Sub-Station was not located at a safe place, being almost on the National Highway and that steps should be taken to shift it to a nearby place. I have to add that these two officers had already inspected the site and the proposal had been finalised, the correspondence being only formal. He submitted his estimates for the purpose which came to Rs. 3172/- for shifting the H.T. line etc. and Rs. 3770/- for dismantling the existing structure and rebuilding it at the new site, totalling Rs. 6,942/-. He added that the work had been taken on hand in anticipation of sanction, as verbally ordered. It might be pointed out that the metalled road here is 50 ft. wide, with a footpath beyond it of 10 feet, and there was 15 feet of vacant space from there to the wooden fence of the Nedous Hotel Annexe. The sub-station was a few feet inside the wooden fencing (see plan Document 19). These would show that but for the petrol pump coming there, there was nothing wrong with the location of the Electric sub-station *vis-a-vis* the Highway.

21.55. The Electrical Engineer in his turn addressed the Chief Engineer on 10th November, 1960 (vide Document 21) stating that the P.W.D. National Highway authorities had desired the removal of the sub-station "*on the plea that it looks ridiculous at the present place and make hindrance to traffic plying on the highway road.*" (1) and pointed out that the work was being completed in anticipation of sanction, in view of the urgency expressed by the Chief Engineer, Public Works Department. I have not purposely referred to the affidavits of the officers, particularly of Mr. P.N. Wanchoo which speak to the respondent having directed them to do this, since they had not been called as witnesses, and I am, therefore, relying for my conclusions only on undisputed documents. If as I found earlier, the respondent was so much interested in Ghulam Jeelani as to get this subject of a grant of lease before the Cabinet, without even his application being circulated in a memorandum, I do not entertain any doubt that the removal of the Electric Sub-Station at Government cost was done only at his instance.

21.56. In confirmation of what I have said, I would refer to one further circumstance. I have pointed out that Stanvac from their office at Delhi made an application on 1st November, 1960 to the Divisional Engineer for the grant of the Nedous site to Commercial Oil Co. for the latter erecting a petrol pump (Document 5). Along with this application they enclosed plans of the site. In their letter (Document 5) they said that the plan had been drawn up in accordance with the Indian Road Congress Rules and in the enclosed plan, though all other physical features and construction in and around the plot are shown, the Electric Sub-Station is not shown. It appears to me that this plan could have been drawn up only after it was known that the sub-station would be removed—an information which could have been given to them only by the proprietors of the Commercial Oil Co. Seeing that the first letter on the subject from the Assistant Engineer (Document 20) is dated 31st October, 1960, it appears to me to be clear that the removal of the sub-station had been promised to the proprietors of the Commercial Oil Co. even before the correspondence commenced and this could only have been by the respondent.

21.57. The next circumstance that was referred to was that Ghulam Jeelani was admittedly a minor (his date of birth as entered in the school register being 14th May, 1946 vide Document 24) and yet he was permitted to execute the agreement of lease that was drawn up in pursuance of the Council sanction. It was pointed out that there were several personal covenants in the lease, and that the lease could not, therefore, have been validly executed by a minor. I should, however, point out that in the agreement of lease (Document 25) Ghulam Jeelani claimed to be 18 years old, which is obviously untrue. It may further be pointed out that when another lease whose propriety is impugned in Allegation 10 was granted to Ghulam Jeelani a few months later, the lease deed was executed on his behalf by his guardian. As I am not concerned with the legal validity of the lease, but only whether the respondent had misconducted himself in getting this done, I am passing over the submission.

21.58. What remains for consideration is the defence set up by the respondent. I might mention that besides the respondent, notice was also issued under Rule 6(1)(a) to Ghulam Jeelani to file his statement in reply, and besides him also to Ghulam Ahmed and Abdul Majid, and they have all filed statements. I do not consider it necessary to refer to or deal with these replies separately, as they do not really add anything to the points raised by the respondent.

21.59. In setting out the defences raised by the respondent, I am ignoring on the ground of irrelevance, those which might be termed "preliminary objections", such as for instance that the grant of the lease having been by a Cabinet resolution, his part in it could not be enquired into by the Commission. Coming to the merits of the case, the respondent first starts by denying all knowledge of the affairs of the family, being wholly engrossed in the affairs of the State. I am not prepared to accept this statement as true in view of (1) what he himself has admitted while replying to other allegations, particularly to Allegation 14 (vide paragraphs 17 and 18), (2) the matters I have stated in connection with the execution and registration of the deeds of dissolution of the several firms in which the members of the family were interested, on 26th December, 1960 at his official residence at 4 Hotel Road, Srinagar, (3) the inference I draw from the several instances in which I have recorded findings that he had interested himself and managed to confer benefits on the members of his family when these were sought by them, and (4) generally as it is not credible at all.

21.60. He next denies the allegation that he personally selected the site at Nedous for the location of the petrol pump by the Commercial Oil Co. There is nothing in the file to support the case that the respondent personally selected this site and as would be seen I have not accepted this statement to be found in the affidavit of Mr. P.N. Wanchoo. But if by the denial the respondent meant that he as Prime Minister never determined the location of sites for petrol pumps, he is contradicted by orders of his on the files. (See for example File No. 11/699/C of Divisional Engineer, Public Works Department, Srinagar—page 11

dated 30th November, 1959)—

"A few months back the Hon'ble Prime Minister was very kind enough to allot us a site at the above-mentioned place for resiting of our petrol pump....."

21.61. The respondent next denies that he handed over three copies of the typed application (Document 3) to Mr. P. N. Wanchoo and in particular that he signed the one which alone bears a signature as Ghulam Jeelani. So far as his signature to Document 3 is concerned, it rests merely on the statement of Mr. P. N. Wanchoo in his affidavit and I have discarded it, more so as the handwriting expert has expressed the opinion that it is not in the writing of the respondent. When, however, the respondent goes on to assert that he had no knowledge of who the proprietor of the Commercial Oil Co. was, I am not prepared to accept his denial for the reason that otherwise he has himself offered no explanation for the subject passing through the Council.

21.62. He follows this, by denying any part or hand in having the Electric Sub-Station removed at Government expense and says it was removed because it obstructed the traffic on the Highway. I have already referred to the documents relating to this topic and from their timing, I am satisfied that the removal was effected according to his directions and merely in order to facilitate the Commercial Oil Co. being allotted that plot and that the reasons assigned are fanciful and invented.

21.63. Dealing next with the allegation regarding the manner in which the application was dealt with by the officers without being processed, the tampering of the receipt register (Document 6), and the manner in which the matter was dealt with in the Development Department (vide Document 11), the respondent says that it was the duty of the Secretary to have observed the proper procedure and if there was a departure, he should have brought it to the notice of the Minister-in-charge. I am not impressed by this argument, seeing that even before the Revenue Department could be consulted, this being Nazul land, and their objections to the alienation ascertained, the matter was taken up by the Cabinet without the subject being on the agenda, and the Council had sanctioned the grant. The respondent goes on to state that he has no recollection of whether there was a memorandum or not and whether it was not specifically on the agenda. There was in fact no memorandum, and besides, the application had not reached a stage when a memorandum could be prepared. As regards the last point regarding the subject not being on the agenda and so could not have been brought up before the Council of Ministers except on his orders, he asserts that the subject of the lease to Ghulam Jeelani was a matter ancillary to the lease to Nedous which was moved by the Development Minister. It is not very clear from this statement in paragraph 20, whether the respondent suggests that the Development Minister moved

this item also, for he leaves the question as to who moved this resolution absolutely and I should think designedly vague. I have already pointed out that excepting that the land granted to Ghulam Jeelani had been under lease to Messrs Nedous there was no connection between the two subjects. The suggestion regarding the Development Minister moving this resolution, as if it was "ancillary" to the lease to Messrs Nedous is ingenuous but obviously untenable. What it does not take into account is, and this is very revealing, that the respondent has nothing to say as to how the Development Minister had knowledge of this application which had not been put up to him by his Secretary for being brought up. I have, therefore, no hesitation in rejecting his explanation and defence as puerile in the extreme.

21.64. Coming next to the absence of a premium, he throws the blame on the Development Minister who could exercise his discretion and that on the construction of the rules which Government accepted they considered that they had a discretion to demand or not to demand the premium. In other words according to him, the absence of any demand of premium was designed and not due to any inadvertence, and that the decision in this regard was or should have been taken by the Development Minister. But as the respondent does not say that sites for petrol pumps were all leased without premium, the exception could have been made in this case only as a special favour to the applicant, and he alone knew who the applicant was and was interested in him.

21.65. This suggestion regarding dereliction of duty on the part of Mr. Shamas-ud-Din, the then Development Minister, is not merely unjustified but manifestly unfair. As would be seen from other resolutions of the Cabinet sanctioning the grant of leases of Government land (vide the resolutions in Allegations 10 and 11, as well as in the several instances of leases to others referred to in discussing Allegations 9 to 11), the amount of the premium fixed for payment by the lessee is specified by the Cabinet in the same resolution. In the present case, I have pointed out that the second resolution in Document 13 could have been moved only by the respondent or at his instance, for none else could have known of the existence of the application for the allotment of a site, not to speak of the identity of the applicant and the situation of the site. If the respondent was thus responsible for the resolution, it follows that he was responsible for there being no mention of any premium in it, and as Minister for Finance had the fullest responsibility for it. The only blame that could attach to the other members of the Council of Ministers including the Minister for Development could be that they acquiesced in this irregularity and loss of public revenue. That is why I consider that this attempt on the part of the respondent to throw the blame on the Minister for Development for the absence of any premium is unfair, smacking of ingratitude.

21.66. In support of the submission that there were other cases

where no premium was charged he refers to a lease regarding a neighbouring plot to M. J. Motors for the erection of a petrol pump in which also no premium was charged. But this is to forget that the earlier lease was in 1958, before the Land Grants Act 1960 was passed. I need hardly add that for the reasons I have stated earlier, the respondent cannot shift the responsibility for the absence of the premium, which in the normal course was invariably exacted from lessees after the new rules came into force, on to the shoulders of the Development Minister, seeing that the beneficiary was a relation of the respondent whom the Development Minister is not likely to have even known, or if he knew at all not except through the respondent.

21.67. The other portions of the reply are neither important nor very relevant to the points I have considered and I, therefore, leave them out of account.

21.68. The respondent has to his reply annexed a list of documents pertaining to nine cases of leases of petrol pumps which he prayed the Commission to summon for perusal and comparison. Seven of these files have been produced and I have examined them carefully. I do not find any analogy between them and the case concerned in this allegation. For instance, in the case of A.R. Batra at Jammu (instance 3) the lease was dated 4th April, 1955 for 10 years at a rental of Rs.47/- per month, but later a dispute was raised as regards the adequacy of this rent. Besides some additional land had been allotted to the firm and they had also encroached on some further land. These disputes were resolved and the position was regularised in 1960 by a Council resolution, affirming the lease of 1955 and fixing the rental for the land originally leased as well as the subsequent addition. Instance 4 is really against the respondent for in the case of Mukha Singh orders were sought for putting up the site applied for to auction as being required by the Land Grants Rules. But the note shows that the Revenue Minister verbally countermanded this and directed the case to be submitted to the Council suggesting a premium of Rs. 2,000 per kanal besides the ground rent on commercial rate, and a memorandum on these lines was prepared and put up before the Cabinet and passed. Whether this was in strict accordance with the rules which require an open auction or not, it is seen that a premium was charged at a rate which would in the instant case have exceeded Rs. 12,000. I have to add that in this case the Financial Commissioner noted that the land if put to auction would fetch more, but the Revenue Minister for reasons not apparent on the file suggested that Rs. 2,000/- per kanal might be charged. This instance, therefore, does not help the respondent—far from it.

21.69. Instance 5 is perhaps if any, more against the respondent. There the premium charged for land of which the note says possession was handed over to the lessee as per orders of the respondent as Prime Minister, was Rs. 5,000- per kanal—this being arrived at statedly on

the basis of the sum "likely to fetch if it had been actually put to open auction."

21.70. Instance 6 is a lease of 1956, before the rules and from the note it appears, that the land was of no use to the Government and they considered that the ground rent fixed for the property was sufficient and as the transaction was before 29th December, 1960, it does not afford any comparison.

21.71. Instance 7 is a case where the premium was sought to be fixed and there is a note of the Financial Commissioner in the file which requires an auction to be held for determination of the premium. But as possession had actually been delivered, the premium was fixed on an estimate of the possible amount that it could fetch in open auction. This instance hardly helps the respondent. No analogous case has been suggested in which premium was waived after the new rules came into force.

21.72. In these circumstances, I am clearly of the opinion that the defence offered does not answer any of the crucial questions which arise on an examination of the documents, which all point to the irresistible conclusion that it was the respondent who managed to have this lease granted in violation of the rules and without any premium being charged. If ever there was a case where the official records lead to the irresistible conclusion that the charge of misconduct is established, this is prominently one such. An anti-dated application without the identity of the applicant being brought up before the Cabinet without being on the agenda, and therefore on the direction of the respondent, the respondent again being the only one who could possibly have known the identity of the applicant, the concurrence of the Revenue Department in whom the property was vested not being obtained, the Finance Department not being consulted though the rules are explicit on the point, the respondent as Finance Minister making good this deficiency, no premium being charged though in every other case this has been done as a requirement of the rules—it is the cumulative effect of so many circumstances that justify this observation. The charge contained in Allegation 9 is, I am clearly satisfied, brought home to the respondent and I find accordingly.

21.73. It only remains to add that the financial advantage obtained by Ghulam Jeelani, minor son of Abdul Rashid, would be at least Rs. 32,000 (for 6 kanals and 8 marlas at Rs. 5,000 per kanal) which is the minimum premium obtaining in the locality. Here I am not taking into account the amount realised at open auction on which Government have relied, where the premium received is nearly twice this figure. To this has to be added Rs. 6,942, the cost incurred by Government in shifting the Electric Sub-Station, yielding a total of Rs. 38,942.

22.1 I now proceed to Allegation 10 which as notified reads:—

"Bakshi Ghulam Mohammad caused undue pecuniary advantage to the tune of Rs. 30,000 to his minor nephew, Shri Ghulam Jeelani, Proprietor M/s Commercial Oil Co. by getting a piece of land situated at B. C. Road, Jammu, leased out to the latter, in violation of the rules and on an inadequate premium of Rs 1,000 per kanal."

22.2 What one might term the background of this charge is according to the Government the same as that in relation to Allegation 9, and so does not need to be repeated.

22.3 Coming to the details of the charge, the history of the matter is briefly this.

22.4 The site of an extent of about 8 kanals which was allotted to Ghulam Jeelani is situated on the Banihal Cart Road at Jammu, a very busy highway and ideally suited for the location of petrol pumps. On 22nd December, 1958, the proprietors of Kathua Motors made an application to the Revenue Minister for the grant to them of this site (Document 1). Kathua Motors was started, it would be recollected, in August, 1955 as a partnership concern of Bakshi Mohd. Yusuf son of Bakshi Ghulam Nabi and one Hardutt a stranger, each with an equal share. Yusuf however, held his share on behalf of the family, Kathua Motors being recited in the award of Mr J. N. Bhat as a concern which was started by Feroze & Co. the parent family concern. The application (Document 1) was signed by Hardutt and by Ghulam Hassan brother of Yusuf as the latter's power of attorney agent. It may be noted that by the arrangements came to between the members of the family at the end of 1960, the share of Mohd. Yusuf was transferred to Abdul Majid, the stranger partner agreeing to the same (vide registered deed dated 26th December, 1960 Document 35 in Allegation-1).

22.5 This application of Kathua Motors was forwarded to the Assistant Commissioner, Nazul for inquiry and report. The statements of the the two applicants were recorded in February 1959 (Document 3) by the Naib Tehsildar who reported on 28th February, 1959 (vide Document 4) that the site was available for allotment, i. e. had not been allotted to anyone else, and that the applicants being permanent residents of the State, were eligible for the allotment. The Municipality of Jammu was consulted, as required by the rules and they stated that they had no objection (Document. 5). The Assistant Commissioner submitted his report on 2nd March, 1959 (Document 6). The Financial Commissioner on receipt of this report forwarded the application to the Revenue Secretary stating that under the rules as formulated by the Finance Department in November, 1957, the premium for the lease

had to be determined by open auction and that this was payable in addition to the ground rent which was a fixed sum, determined under the rules for each locality (Document 7). The file was then put up to the Revenue Minister. Mr. Dina Nath Mahajan (about whose part in the lease which was ultimately granted, I shall have to comment in its proper place), who directed his Personal Assistant to have the case examined immediately by the Revenue Secretariat. The Revenue Secretary was then on leave and the lower officer in submitting the papers direct to the Minister made two alternative suggestions: (1) To mention in the memorandum be prepared for the Council that the Finance Minister's concurrence will be sought in the Council or (2) whether the papers may be forwarded to the Finance Department. Mr. Mahajan drew a vertical line in the margin where the alternatives were set out and suggested that the case be put up to Council without its going to the Finance Department (note of Minister dated 25th April, 1959 File NDJ 21/59 Rev Sectt.). He recorded no reason for departing from the rule pointed out by the officers of his Department regarding determination of premium by open auction but marked the application for being put up to the Council of Ministers for sanction, observing—

"Ordinarily Nazul lands are put to open auction for determination of premium but in this case the land is proposed to be leased without observing the procedure prescribed therefor under the rules. As such consent of the Finance Department for determination of the premium and ground rent will be necessary for leasing the land in favour of the applicants and may be obtained. The Revenue Minister therefore submits the case for orders in Council."
(Vide Document 8 dated 25th April, 1959).

This draft which was prepared in accordance with the orders of the Minister was approved by him (vide page 3 of the file). The Secretary to the Development Department, however, noted on 14th May, 1959 that the application could not as suggested, be placed before the Council without the recommendation of a committee set up under Mr. Shahmiri Sahib. It was, therefore, kept pending till the revision of the Nazul Rules under the land grants Act 1960 (Document 9).

22.6 The rules under the Act were as seen already approved by the Cabinet on 29th December, 1960, and on the same day, the Revenue Minister noted on the file in his own hand—

"Nazool Rules have been framed and passed by the Council of Minister. The case may be recommended to the Council for the grant of lease,"

and signed it. The Department, however, noted on the file that as the copy of the new rules was not yet available,

the matter may be referred to the Financial Commissioner. The Revenue Secretary, however, noted his disagreement with this suggestion and said that as the Minister himself had ordered the matter being put up to Council, this should be done. This was on 17th January, 1961 (vide page 5 of the file)

22.7 By this date the partition of the family concerns had taken place including changes in the composition of the Kathua Motors, this being allotted to Abdul Majid's share. But there was evidently understanding in the family, on set out in the award, by which the benefit of this application was to go to Abdul Rashid. Accordingly on 25th January, 1961 the original applicants—Hassan and Hardutt—filed an application before the Revenue Minister requesting that the site which they had applied for may be granted to the Commercial Oil Co. (Document 10), without making any reference as to who the proprietor was. On receiving this document, Mr. Mahajan immediately endorsed it to the Revenue Secretary who on the same day addressed a letter (Document 11) to the Commercial Oil Co. desiring to know the names of all the proprietors with a view to ascertain if they were permanent residents of the State and so were eligible to obtain a lease. The reply by the firm was on the same day (25th January, 1961, Document 12) that it was the proprietary concern of Ghulam Jeelani (without indicating that he was a minor). These three letters on the same date would seem to suggest that the party was waiting at the office and that the correspondence was exchanged there and then. The last letter was diarised on the 27th and on the same day the Revenue Secretary wrote to the Commercial Oil Co.: "I am directed to ask you please to furnish an application from the proprietor Mr. Ghulam Jeelani for grant of lease" and also "furnish a State subject certificate." This "direction" here was admittedly by the Minister Mr. Mahajan for we have his approval of the terms of this letter endorsed on the margin of the office copy (Document 13). The application which was invited was filed on 7th February, 1961, being presented to the Minister personally (Document 14) and was signed by Ghulam Ahmed (brother of Abdul Rashid) as the guardian of Ghulam Jeelani, he being here shown as a minor, as contrasted with what took place in relation to the Nedou's Hotel site with which Allegation 9 is concerned. It is evident that this was done because the State subject certificate which was enclosed, showed him to be a minor of the age of 14 (He was born on 14th May, 1946).

22.8 At this stage it is necessary to refer to a Cabinet decision which was arrived at on 8th February, 1961 in relation to the grant of leases. It was decided then (See File D K 3/61 Rev NDKK 61/3 Rev Secretariat and U. O. 842/CS/61 Jammu dated 15th February, 1961) that by reasons of the new rules under the Land Grants Act, the competent authority might issue orders "with the previous consultation of the Prime Minister" (Document 24). To this I shall advert later.

22.9 The application of Ghulam Jeelani was then noted on in the Revenue Secretariat and it was pointed out (vide paragraph 6 of Document 16)—

"Ordinarily the lands are required to be put to open auction for determination of premium. But in this case the land has not been put to auction. The Revenue Ministry therefore propose a premium of Rs. 1000/- per kanal to be charged for the land in question, just as has been charged by Government in the case of the second Flour Mill."

The note continued—

".....if approved the matter may be referred to the Finance Department for concurrence as it is outside rules and as such involves financial implications, before any further action in the matter is taken at this end."

The Revenue Secretary endorsed his view noting—

"F. D. be consulted. 27/2/61"
(vide Document 16 note 8)

22.10 Notwithstanding this categorical recommendation of the Revenue Secretary which sought conformity to the rules, a memorandum was prepared for the Cabinet on the directions of the Revenue Minister, the final draft of which was approved by him. Curiously, in this memorandum (Document 17 dated 28th March, 1961) though it was stated that there was a departure from the rules in that no auction was being held to determine the premium and the analogy of the rate of premium fixed for the second Flour Mill was referred to, there was nothing to indicate that the Finance Department had not been consulted as required by the Rules of Business framed by the Sadar-i-Riyasat as also by the provisions contained in the Kashmir Book of Financial Powers. And this notwithstanding that the department had in its notings prominently brought this to the notice of the Minister as seen in Document 16.

22.11 This came up before the Cabinet on 6th April, 1961 and the lease was directed to be granted "as recommended by the Minister" (Document 18) and a formal Government order making this grant was issued on 17th April, 1961 (Document 19), which was followed by the execution of a regular lease deed on 1st August, 1961 (Document 20)

22.12 I have now set out the entirety of the history of this transaction and shall now proceed to deal with (1) the irregularities or illegalities which were alleged in the granting of this lease, (2) the manner in which it sought to bring home the charge of abuse of power as against the respondent.

22.13 Taking the irregularities first, these were stated to be (a) that there was no auction as required by the rules to determine the premium, (b) that even otherwise the Finance Department was bypassed, thus infringing specific rules on the point, (c) even if the consent of the Finance Minister could take the place of the consultation with or concurrence of the Finance Department, the fact that the Finance Department was not consulted was deliberately suppressed in the memorandum put up to the Cabinet and (d) that the premium of Rs. 1000/- per kanal charged was deliberately and unduly low, and was so fixed to benefit a relation of the respondent and that in consequence, a relation of the respondent had unduly benefited.

22.14 I shall now take up these points in that order. But before doing so, it is necessary to refer to the fact that having regard to the part that the Revenue Minister Mr. D N Mahajan had taken in the grant of this lease, I considered it necessary and proper to issue notice to him under Section 10 (1) of the Act, in order that he might be afforded an opportunity to explain his conduct. He appeared in response to this notice on 28th September, 1966 and was furnished with copies of the statement, the affidavits and the documents filed in respect of this as well as Allegation 11 also in which he was the Minister concerned. Besides, learned counsel for Government drew his attention to the matters alleged against him, so that he might be in a position to furnish his answers. He took time and filed a statement on oath on 17th October 1966. As I considered that this statement needed clarification and explanation on several matters, I directed notice to issue to him that he could appear before me on 5th December, 1966, to make any further submissions he desired. But he sent a reply stating that he had nothing further to add to his earlier sworn statements and so I have to proceed on the basis of these statements alone.

22.15 The main documents on which his explanation was sought were Documents 7 to 13. In Document 7 though the Department pointed out that the premium had to be fixed by auction, he had directed the papers to be put up to Council without this being done. It had been submitted by Mr. Khambata that this indicated more than normal interest. Mr. Mahajan in his reply after conceding that the suggestion of excessive interest might be plausible, however, asserted that this was done in the usual course. It is, however, to be noted that in pursuance of his directions, a memorandum was being prepared for the Cabinet, and the office put up a note as to whether the Finance Department might be consulted. He directed on 25th April, 1959 that it need not be consulted without any reason being assigned for this, but he put up straight to the Council (see note in File NOG 21,59 Revenue Sectt. pages 1 and 2). He had no explanation as to why he passed this order.

22.16 In regard to Document 8, the memorandum prepared under his direction as seen from the drafts on file, it is true that it is stated therein that the consent of the Finance Department was necessary and had to be obtained. He relied on this circumstance, but the fact is though he said that Finance might be consulted, he nevertheless in the final paragraph directed the file to be put up to Cabinet, which would mean without such a consultation and secondly this memorandum never went to the Council, as the Development Secretary held it back for the reason that the matter could be sent up only after the rules were finalised, so that the Council never knew that Finance had not been consulted. However, with some hesitation, I would be prepared to accept the submission of Mr Mahajan that his conduct up to this point might not show any excessive interest in the application being granted and on the most favourable terms, particularly as the lease was not granted on this memorandum.

22.17 The same, however, I am unable to say in regard to what transpired from and after 29th December, 1960 (vide Document 9). It would have been noticed that in April-May 1959, the application of Kathua Motors was directed to be kept pending till after the finalisation of the rules under the Land Grants Act, 1960. These rules were put up before the meeting of the Cabinet on 29th December, 1960 and were passed on that day. On the same day it is found that Mr. Mahajan noted on the file now in question pointing out that "the rules have been passed and that *the case may be recommended to the Council for the grant of the lease.*"

22.18 The question was naturally raised as to why Mr. Mahajan was so prompt to have this application taken up and recommended to Council when several other applications had been kept pending and it was submitted that this was due to the Minister taking a personal interest in this matter as it related to a nephew of the respondent. His explanation for his direction on the 29th December, 1960 itself to proceed with this case, again after conceding that the suggestion of the Government might be plausible, is three-fold :

(1) That on the date on which the rules were passed he might have asked his Secretary to place all such cases as were pending and passed orders on those which were brought to him, or

(2) The Secretary after knowing of the passing of the rules put up the application before him at the instance of the applicant, or

(3) that he placed this application before him on his own initiative.—

He follows this by a categorical denial that he himself picked-up this file.

22.19 The files really contradict each and every one of these explanations. In the first place, though there were several applications which had been directed to be kept pending till the passing of the rules, this was the only one that was taken up on 29th December, 1960 and the others were taken up much later after the rules were published in the Gazette and their provisions were available to the Secretariat. Document 25 was prepared in the Revenue Secretariat analysing the various pending applications and classifying them, and suggesting suitable orders or directions that might be passed in regard to each category. This was on 17th February, 1961 and the note shows that it was prepared as desired by Mr. Mahajan, the action suggested being approved by him on 22nd February 1961. Therefore the question as to why this one was picked is not answered by the first alternative suggestion. The suggestion that the Secretary might have put up the papers on coming to know of the passing of the rules, has also to be rejected for the reason that neither the Development Secretary nor the Revenue Secretary are seen to have been aware that the Cabinet finalised the rules even on the 30th December, 1960 as seen from Document 11 in Allegation 9 already discussed. The only persons who knew of the passing of the rules were the members of the Cabinet present including Mr. Mahajan, and the Chief Secretary who as Secretary to the Cabinet was present at the meeting not any other Secretary. The explanation, therefore, that the Secretary put up the file before him knowing of the passing of the rules must be rejected, in both the forms, that the Secretary did this at the instance of the applicant, or on his own initiative. I have only to add that it is not clear how Mr. Mahajan could say that the applicant knew of the Cabinet decision regarding the rules which even the Development Secretary dealing with the application did not know, even before the ink on it was dry, unless he implies that either he or the respondent gave him the information, but this suggestion might not help him either.

22.20. The next matter on which his explanation was sought was the further notings in Document 9 in which because of his orders, the Secretariat desisted from consulting the Finance Department and the memorandum was prepared for the grant of the lease being put up to the Council, but this aspect has not been dealt with by him in his explanation. As this matter recurs at a later stage, it would be convenient to consider it then.

22.21 The last of these notings was that dated 17th January, 1961 and then the matter was ripe for being placed before the Council for the grant of the lease to Kathua Motors, but by then, it had been decided on the side of the applicants, and we accordingly find the applicants, who according to Mr. Mahajan were getting themselves completely posted with the notings in the file, filing a petition that the

lease may be granted to the Commercial Oil Co. Who constituted the firm was not disclosed in the application, but the application immediately it was received by Mr. Mahajan to whom it was addressed, was marked by him on the same day to the Revenue Secretary. Of course, the expedition with which Mr. Mahajan acted, was commented on, but I do not attach any significance to it. But when the Revenue Secretary ascertained on the 27th the name of the proprietors of the Commercial Oil Co., we find him addressing the company *on the direction of the Minister* to file an application. Mr. Mahajan seeing his notings in the file which preceded this letter admitted that he had given the direction, but explained his conduct by stating that when the papers were put up before him, he told the Secretary that without an application by the Commercial Oil Co. the substitution sought by Kathua Motors could not be granted. The wording of the letter (Document 13) does not support this construction and it is found that Mr. Mahajan himself approved of the contents of this letter. The addressee is not told that without an application substitution could not be made, but that he should apply, which obviously meant that if applied the grant would be made as desired. The other point which Mr. Mahajan raises viz. that he did not write the letter himself but the Secretary, is really irrelevant, immaterial and unhelpful to him since admittedly he directed this letter with its contents to be addressed to the Commercial Oil Co.

22.22. We next have Document 16 which contains the notings as regards the application from the beginning to 27th February, 1961. Learned Counsel for Government relied on the notes — paragraphs 7 and 8 — in which the Deputy Secretary Revenue and the Secretary of the Department both pointed out that "as the procedure by auction was not being followed for determining the premium, the Finance Department may be consulted" and submitted that Mr. Mahajan had in spite of this noting deliberately by passed the Finance Department for the reason that if consulted they might suggest the imposition of the usual premium which as seen from other files, was not less than Rs 4,000/- per kanal (see Document 21 — file regarding application of Messrs Sital Singh Ishar Singh for the grant of land for a petrol pump on the B. C Road where the Deputy Commissioner, Jammu had noted on 17th July, 1961 that usually Rs. 4,000/- per kanal was charged as premium for petrol pumps). Mr. Mahajan says that these notings were not placed before him. I do not, however, accept this statement for the reason that he had himself noted at the earlier stage on 25th April, 1959 in the margin of this file that the Finance Department need not be consulted, but that the matter may be put up to the Council of Ministers. Though after paragraph 8 there is no noting by the Minister, this was evidently because he had already noted. Besides, I must presume that the Minister was acquainted with the rules of Business of the Council of Ministers and the rule that in the absence of an auction to

determine the premium, the Finance Department had to be consulted.

22.23. Mr. Mahajan then goes on to suggest that in the case of an application for a lease for a petrol pump an auction was out of the question, because only those accepted as dealers by the oil companies could run the petrol pumps. This submission appears on the surface to have some force, but admittedly there were instances where the premium for such leases was determined by auction and the office notings do not show that auctions were ruled out in these cases, as apparently the oil companies were willing to grant dealerships to those who successfully bid at these auctions and received a good site for a pump, and taking the present case itself, the correspondence between the Commercial Oil Co with Ghulam Ahmed as partner and ESSO started only in November 1962 (vide Document 23), more than a year after the lease was obtained in the name of Ghulam Jeelani. The point, therefore, does not appear to me to have much substance, having regard to the prevailing practice of oil companies. Besides, I should add that this was not the view of the officials of the Revenue Department, for in the first noting on the application, the suggestion is made that the premium may be ascertained by auction in accordance with the rules.

22.24 We next have the memorandum to the Cabinet and the point made by Government in relation to it was, that though it had been stated that no auction had been held as required by the rules, it was not stated that the Finance Department had not been consulted, and that the concurrence of the Finance Minister was, therefore, sought for the proposal. Though this point was strongly stressed by Mr. Khambata in the presence of Mr. Mahajan, the latter has slurred over it in his statement and he refers to the memorandum placed before the Council in relation to the lease which is the subject of Allegation 11 which came before the Council on 3rd August, 1961, whereas this one was passed on 6th April, 1961 and was based on a different memorandum. I am unable to follow the reasoning by which the Council of Ministers and particularly the Finance Minister were stated to have been aware of the non-consultation with the Finance Department because in respect of a proposal brought four months later in regard to a different application, the same was stated. I do not consider it necessary to elaborate the incongruity and baselessness of this explanation.

22.25 The next point was about Mr. Mahajan himself fixing the premium at Rs. 1000/- per kanal and this being too low. Mr. Mahajan referred in this connection to the instance cited by Government of a plot of 6 marlas fetching on auction a premium of Rs 1880/-, i. e. over Rs 6,000/- per kanal and explained it as the case of a small plot in the centre of the city. But he made no reference to a neighbouring plot in B. C.

Read Jammu where the firm of Messrs Sital Singh Ishar Singh was granted a lease of a site of 1 kanal 16 marlas for a premium of Rs 5,000/- per kanal (Document 21). I might add that it is in the file in connection with the application of Messrs Sital Singh Ishar Singh that we have the statement of the Deputy Commissioner, Jammu, that usually Rs 4,000/- per kanal was charged for petrol pumps.

22.26 He next denied the suggestion that he had instructed the Secretary to see the matter through as the applicant was a nephew of the respondent and wounded up with the assertion that it was possible he had erred in discharging his official function, but that the same was never intentional to favour any individual.

22.27 I might now summarise my conclusions as regards the part played by Mr. Mahajan in this transaction. I pass by the initial stages without commenting on the progress of the application made in 1958 by Kathua Motors until we reach the stage of the matter being placed before the Minister. Two alternatives were put before him by the note of the Department in connection with that application. They were: (1) That the Finance Department be consulted which was the normal and usual course which was followed in as far as I could see every other case, and (2) that the matter be put up to the Council and there the concurrence of the Finance Minister be obtained. It need hardly be stated that the second procedure which is also contemplated by the rules is an exceptional one designed to meet urgent cases where delay had to be avoided or where by inadvertence consultation with the Finance Department and the notings by its permanent staff could not be had. Admittedly, neither of these conditions would apply to the application of Kathua Motors, but yet Mr. Mahajan noted on 25th April, 1959 that the matter might be put up to the Council. It would have been so put up to Council had not the Secretary in the Development Department withheld the file on the ground that the rules under the Land Grants Act, 1960 were being finalised and that like other similar applications for grants of Nazul land, this too might be put up to Council after the rules were framed and in accordance therewith.

22.28 The next stage of Mr. Mahajan's interference in this matter is in his noting on the 29th December, 1960 when he desired that this matter should be put up to the Council since rules had been framed. I have already pointed out that he alone was aware of the passing of the rules and of their contents and the evidence taken in conjunction with Document 25 unmistakably establishes that Mr. Mahajan picked out this application by himself for expeditious disposal out of the several other applications which were then pending till the finalisation of the new rules, an inference strengthened by his subsequent conduct.

22.29 After Mr. Mahajan's noting on 29th December, 1960 some of the officers of the Department pointed out that as the application would have to be processed and examined with reference to the new rules and as no copy had yet been issued, the matter might be referred to the Financial Commissioner, but the Revenue Secretary made a note on 17th January 1961 that the Financial Commissioner, need not be approached as the Minister himself had ordered the matter being put up to the Council and that, if necessary, the rules may be examined in the Revenue Department itself. The notings on the files do not indicate that there was any examination of this application with reference to the new rules.

22.30 Next we have the fact that applicants who had evidently been keeping track even of the notings in the Secretariat applying to the Minister personally within a week after the last noting on 17th January filing Document 10 seeking the lease in favour of The Commercial Oil Co. I have already pointed out that Documents 10, 11 and 12 bear the same date and were most probably exchanged by the applicants remaining in the office of the Minister and then finally we have document 13 by which on 27th January, 1961 on Mr. Mahajan's direction the Revenue Secretary invites the Commercial Oil Co. to file a fresh application for the lease. I have examined the explanation of Mr. Mahajan as to the exact directions which he gave to the Revenue Secretary and I have expressed my inability to accept his version in view of the categorical nature of the language employed in Document 13.

22.31 At the next stage we have the memorandum for the Cabinet in which the lease is recommended to be granted on a premium of Rs. 1000/- per kanal and this being stated to be the premium charged for the flour mill at Tawi. Mr. Mahajan must certainly have been aware that the grant of the land for the second flour mill at Tawi Bridge had nothing in common with the grant of the land to Commercial Oil Co. That case was of grant of a lease on compassionate grounds to people who claimed to have lost their all by the stoppage of their trade by enemy action, and it was in a sense a measure for their rehabilitation. It, therefore, bore no analogy to the lease of a plot of land for setting up a profitable petrol pump by persons in affluent circumstances and in an area where the usual rate of premium charged as pointed out by the Deputy Commissioner, Jammu was Rs. 4,000/- per kanal. Mr. Mahajan does not say that he did not advert to the propriety of the rate of the premium suggested in the draft memorandum and there can be no dispute, seeing what he had done in regard to the fixation of the premium for a similar petrol pump which is the subject of Allegation 11, the premium of Rs. 1,000/- per kanal suggested in the memorandum could only have been at his initiative.

22.32 The submission of Mr. Mahajan that the bypassing of the Finance Department was really made up and the irregularity, if any, regularised, by the concurrence of the Finance Minister who was present at the meeting of the Council of Ministers is, as I have already pointed out, without any substance because in the memorandum no mention was made of the fact that the Finance Department had not been consulted. In this connection Mr. Mahajan points to an earlier note to the Cabinet prepared in March 1959 in which reference had been made to the Finance Department not having been consulted. But unfortunately for this explanation, the earlier memorandum never went to the Cabinet because the Secretary to the Development Department withheld it on the ground that the rules had not been finalised and the one memorandum which was circulated to the Cabinet and as a result of which the lease was sanctioned did not specify that the Finance Department had not been consulted.

22.33 Mr. Mahajan does not say that he was not aware of the identity of the applicant when an application was made in the business name of the Commercial Oil Co. He has not given any explanation as to why special attention was directed to this application, why of all the applications, this was selected and special treatment accorded to it in the manner (a) of expedition and (b) of special concessions, except it be that he desired to confer a favour on a relation of the respondent.

22.34 I now come to the question as to whether the advantage secured by Ghulam Jeelani was either by the direction of Bakshi Ghulam Mohd. or whether his official position was exploited with his knowledge, consent or connivance. Now so far as this point is concerned, the case of the Government suffers from patent weakness. In the statement of the case which sets out the matter, which the respondent had to answer, there is no assertion that the respondent gave any directions in this respect or permitted his position to be exploited by others. The only place where the respondent is referred to in the statement of the case is to be found in paragraph 9 where after referring to Document 13 it is stated—

“The directions in this connection were given by the Revenue Minister to Shri Ghulam Nabi, Revenue Secretary, who was asked to look into the matter and see it through as Bakshi Ghulam Mohd. the then Prime Minister was interested in this case.”

It would be seen that this sentence does not really connect the respondent with the granting of the lease. If anything, it charges Mr. Mahajan with having taken an undue interest in this matter for the reason that the applicant was a relation of the respondent. Mr. Khambata, Learned Counsel for the Government, however, while conceding that in paragraph 9 of the

Statement of the Case had to be considered by itself, the respondent had really no case to answer, however, referred to the reply of the respondent in which this paragraph and this passage were understood by him as meaning that he had asked Mr. Mahajan to look after the interest of his relation and that the latter did so in the manner set out in the passage extracted from paragraph 9 of the statement of the case. I do not, however, consider that reliance could be placed by the Government on this, because if that is treated as an admission by the respondent of what the passage meant, he has followed it by asserting that he never asked Mr. Mahajan to interest himself in his relation. As the admission has to be taken as a whole, I have necessarily to find that there is no material to support the submission that the respondent directed Mr. Mahajan to interest himself in Ghulam Jeelani and put it through. I have only to add that of course Mr. Mahajan does not say that the respondent spoke to him about this application or gave him any other indication of his interest in it. The fact that Mr. Mahajan took more than ordinary interest in it, could not by itself be evidence implicating the respondent nor it might very well be that Mr. Mahajan took it upon himself to specially favour a relation of the respondent for his own purposes.

22.35 My finding on this allegation, therefore is that though Ghulam Jeelani, a near relation of the respondent obtained financial benefits by the commission of irregularities, the same was due to the action of the Minister Dinanath Mahajan, but that it is not proved that the respondent gave any direction in that regard or allowed his position to be exploited as set out in the note to Schedule II.

22.36 It only remains to add that the financial advantage obtained by Ghulam Jeelani, minor son of Abdul Rashid would be the difference between Rs. 1,000/- per kanal actually charged as premium and the usual premium of Rs 4,000/- per kanal which was charged to other lessees of petrol pumps on the B. C. Road, and it would come to Rs. 24,750/- (8 kanals 5 marlas @Rs 4,000/- per kanal = Rs 33,000/-. Amount paid as premium = Rs. 8,250/-. Difference between the two amounts = Rs. 24,750/-).

22.37 Before concluding, it might not be out of place to mention the manner in which Ghulam Jeelani the lessee used this property. Ghulam Jeelani appears to have been merely the name in which the lease was applied for and obtained by showing him as the proprietor of the Commercial Oil Co. But very soon after the lease was obtained the real persons appeared on the scene and they were Mst. Raja Begum wife of Abdul Rashid and his brother Ghulam Ahmed who figured as partners trading under this name. The period during which the Commercial Oil Co. themselves ran the petrol pump on the site granted to them in the B. C. Road is not clear, but we find that in January 1963 the Commercial Oil Co by its partners entered into a contract with one Diwakar Singh son of Kartar Singh under which the Commercial

Oil Co. handed over the service station to the latter for running the same. Under this agreement which is Document 22 Diwakar Singh undertook to provide the working capital and was to have the right of management. In consideration of the handing over of the site—the gasoline pump having been erected by the ESSO—the partners of the Commercial Oil Co. were to be paid 40% of the net profits, Diwakar Singh retaining 60%. In the statement of the case filed by the Government they charge the respondent with abuse of his official position in permitting this sub-lease of the pump site in violation of the rules. As this was not a part of the charge in the allegation as notified, I ruled that I would not examine or take into account any irregularity or impropriety in permitting this sub-lease. Why, however, I am mentioning this transaction is that it affords some evidence of the profitable nature of the business in that for parting with this site they were able to find a lessee who himself finding all the capital needed would give them 40% of the net profits accruing from the pump. There is no material before me as regards the profits actually paid by Diwakar Singh to the Commercial Oil Co. under this arrangement, so that I am not in a position to evaluate the profits obtained by the Commercial Oil Co. in this manner by reason of the grant of this lease.

23.1 The third and last of the charges falling into this group of allegations of favouring Abdul Rashid is that contained in Allegation 19. The amount of financial advantage obtained by reason of the abuse of power alleged in this charge is extraordinarily high, being as much as over Rs. 2,30,000/-.

23.2 In regard to this allegation it is the case of the Government that through the abuse and exploitation of the respondent's official position, the wife and brother of Abdul Rashid obtained the agency of ESSO for petrol pumps in Srinagar and Jammu, besides obtaining a cartage contract for transporting ESSO products under the latter of which they have admittedly obtained in the course of about 3½ years Rs. 2,34,660/- during the period when the respondent was in office as Prime Minister and for a little while thereafter, these profitable contracts having been terminated prematurely sometime after the respondent ceased to hold office. Allegation 19th in which this charge is made is in these terms:—

The official position of Bakshi Ghulam Mohammad was abused and exploited in respect of the following:—

- (a) Smt. Raja Begum W/o Bakshi Abdul Rashid and Bakshi Ghulam Ahmed cousin of Bakshi Ghulam Mohammad, obtained the agency for the petrol pumps from Standard Vacuum Oil Company (now Esso) in Srinagar and Jammu.
- (b) They also obtained the carriage contract for Esso products which they sub-let to Ch. Aishi Ram Batra

for Rs. 50,000 per year which was later increased to Rs. 75,000 per year.

- (c) The Government Transport Department Petrol Pump at Srinagar was withdrawn from M/S Caltex who had been running it upto that time and given to Standard Vacuum Oil Company."

To appreciate the charge as well as the documents which have been relied on in its support, it is necessary to set out certain previous history as regards the distribution system regarding petrol for Government use

23.3 The Transport Department of the State came into existence in 1948. For the use of the vehicles of the Transport Department three filling stations were established one at Lakhanpur on the border with Punjab, another at Jammu and the third at Srinagar. Up till 1958 the Burmah Shell were the sole suppliers of oil required by the Jammu & Kashmir Transport Department when they used to supply petrol for everyone of these three filling stations. In 1958 a change was introduced by which in order to encourage competition between the several oil companies in India, the State began purchasing the oil they needed, not merely from Burmah Shell but from Standard Vacuum Oil Co (which later came to be known as ESSO) and Caltex India Ltd. This was done by allotting each of these three filling stations to the three companies. The Burmah Shell was to supply the Lakhanpur filling station, the Stanvac the Jammu station and Caltex the Srinagar one.

23.4 For reasons which will be set out later, this arrangement was changed in 1961 as a result of which Burmah Shell was allocated the Jammu station, Stanvac Srinagar and Caltex Lakhanpur. The quantity of petrol drawn from these three filling stations varied widely and that is a feature to which some reference would have to be made when dealing in detail with the reason assigned for these changes.

23.5 There is another matter to which reference must now be made. Each of these three companies had their depots at Pathankot, the railhead, and the transport of these products from Pathankot to the three filling stations was arranged by the companies themselves each through its own cartage contractor. The Burmah Shell employed Messrs Jodh Singh Gujral, the Caltex India, Littlesons and Esso (Stanvac) employed Aishi Ram Batra. As would be seen from the discussion in the charge relating to Allegation 27 as well as the details to be mentioned hereafter, the business of cartage of petrol from Pathankot to Jammu and Kashmir was a very lucrative business. The profits obtained by these cartage contractors for transport necessarily depended on the length of the lead, Lakhanpur being nearest to Pathankot would have yielded the least profits, Jammu was

slightly better and Srinagar was the best. Cartage of petrol products, it need hardly be mentioned, was dependent on the contractor's ability to secure route permits from the Jammu & Kashmir Government for plying the tankers.

23.6 Towards the end of 1960 the joint businesses carried on by the several branches of the Bakshi family were broken up. The Commercial Oil Co. was started of which Ghulam Jeelani the minor son of Bakshi Abdul Rashid, was put forward as the proprietor. As has been noted, it was in his name that two petrol pumps, one at Nedou's Hotel site which is the subject-matter of Allegation 9 and another at B. C. Road Jammu, the Subject-matter of Allegation 10, were secured. After some little time and towards the end of 1961, Commercial Oil Co. was stated to be or to have become a partnership concern of Raja Begum wife of Abdul Rashid and Ghulam Ahmed the latter's brother. The Commercial Oil Co. which obtained on lease the site for these petrol pumps secured, after the partnership was formed, dealership for the oil and oil products of Stanvac (which later became ESSO). The first part of the charge contained in this allegation is as regards the obtaining of this agency for the petrol pumps which is said to have been rendered possible by the abuse of official position of the respondent. The second part of the charge which is comprised in the paragraph numbered (b) relates to the manner or means by which the Commercial Oil Co. comprising of the partners above-name obtained in 1961 the carriage contract from the ESSO for carting their oil from Pathankot to the Srinagar filling station of the Transport Department. It has already been stated that at about this date the Standard Vacuum Oil Co (ESSO) were allotted the contract for feeding the Srinagar filling station. I have also mentioned the fact that the cartage contractor employed by Stanvac was "Aishi Ram Batra" and they had done this work for them over a decade. The Commercial Oil Co. when they were appointed cartage contractors of ESSO displacing Aishi Ram Batra, had no tankers for transporting oil and needless to say they were absolutely without experience in the oil transport business. In order to enable the Commercial Oil Co. to fulfil their contract it is stated by Government that ESSO themselves approached the partners of Aishi Ram Batra and induced this firm to work as the sub-agents of the Commercial Oil Co. and do the work. Aishi Ram Batra was persuaded to accept this role as sub-contractor, under an arrangement under which they were to pay Bakshi Ghulam Ahmad Rs 4,200/- per month, the understanding being that the latter would arrange to get the necessary route permits issued for enabling the transport to be effected. Seven route permits were thus obtained by Aishi Ram Batra and in view of the expanding business due to the increasing volume of oil to be transported, the amount payable to the Commercial Oil Co. was increased from Rs. 50,000/- a year -which was the sum originally fixed to Rs. 60,000/- and then to Rs. 75,000/- a year. As a result of the payments made on this scale, it is a proved fact not disputed,

that a total sum of Rs. 2,34,660/-has been paid by Aishi Ram Batra to Bakshi Ghulam Ahmed, partner of the Commercial Oil Co. This arrangement, however, which seems to have been wholly dependent upon the difficulty of Aishi Ram Batra obtaining the necessary route permits, was put an end to soon after the respondent ceased to hold office and the sub-agency agreement was prematurely terminated and the payments under it stopped. The gravamen of the charge, therefore, in the second part of the allegation, is that by reason of the control which the respondent exercised over the issue of route permits for transport vehicles and the manner in which that control was exercised, the Commercial Oil Co composed of the wife and brother of Bakshi Abdul Rashid, cousin of the respondent, was enabled to obtain pecuniary advantage to the tune of over Rs. 2,34,000/-.

23.7 Before I refer to the documents,—for reasons already stated I am not referring to the affidavits,—it would be useful to refer to the defence set up in the replies which have been filed by the respondent and by Raja Begum and Ghulam Ahmed to whom also notices had been issued under Rule 6 (1) (a) to make their submissions in answer to the charge.

23.8 In the course of his reply in regard to paragraph (a) of the allegation, namely, the shift in the oil companies who were to supply oil to the several filling stations of the Government, having been brought about by abuse of power, the respondent while admitting the facts regarding the changes states that these were effected by the then Transport Minister Mr. Rajpuri which were in implementation of a decision of the Council of Ministers. His further submission is that these changes were in pursuance of a policy of giving these stations to the three companies on rotations each for a period of two years. Coming next to the allegation in paragraph (b) he denies in paragraph 10 that the route permits were ever controlled by him personally during his tenure of office and he recalls what he had stated in reply to Allegation 27 as part of the reply to this. Besides, in paragraph 17 he denies all knowledge of Bakshi Ghulam Ahmad obtaining permits from the Transport Department for Aishi Ram Batra or, of course, that they were obtained by the exercise of his influence. Later he denies that he had given any instructions to issue route permits to Ghulam Ahmad as and when required and asserts that as a matter of State policy no permit was refused to any such contractor.

23.9 The reply of Raja Begum is non-committal as she denies any personal knowledge of the affairs of the Commercial Oil Co. stating that they were conducted by her husband and his brother and refers the Commission to the statement of Ghulam Ahmed.

23.10 The vital reply, therefore, on the merits is that of Ghulam Ahmed. After admitting in paragraph 2 that the business of cartage was quite profitable, he repeats what the respondent has stated in a passage already referred to that it was the settled state policy that contractors doing the business of transporting petroleum products in the State felt no difficulty in securing the requisite number of permits and he adds, "not a single instance can be pointed out where permits were refused to any cartage contractor." Naturally, he denies that the respondent controlled the issue of permits or that his position was exploited in order to secure the permits for his carriage contract. In paragraph 9 he denies that he and his brother Abdul Rashid were not given any share when the dissolution of the businesses took place at the end of 1960, but however, it is not specified what exactly they obtained under this arrangement except to say that they got such share as they desired. As regards the changes made in respect of the oil companies which were to supply the several filling stations, he attributes it to the policy of the then Transport Minister Mr. Rajpuri with the object of discountenancing monopoly and introducing the principle of rotation, though curiously enough, even the respondent does not say that this policy was designed to eliminate monopoly which obviously it could not and did not, because each filling station was supplied by one company only. He claims that even when Ghulam Jeelani was put forward as a proprietor of the Commercial Oil Co, he was in management though he was then just 15 years old and that as its proprietor he entered into business transactions with ESSO. The Government in their case had alleged that Ghulam Ahmed had no previous experience at all of transporting oil or indeed of doing any transport business. In paragraph 12 he denies this and says that 'as one of the constituent group under the auspices of Messrs Feroze & Co this respondent had lot of experience in various aspects of transport.' It may, however be stated that from the commencement of Feroze & Co.'s business in 1948 right up to the dissolution of the several business at the end of 1960, though they were dealers of passenger and goods automobile vehicles they have never engaged in the business of transporting goods or passengers and the Indian Oil Company's contract dealt with in Allegation 27 and the present one were the first transport contracts undertaken by any member of these families.

23 11 Next, dealing with the arrangement with Aishi Ram Batra he says--

"It is not denied that M/S Chowdhary Aishi Ram Batra had been cartage contractor for M/S ESSO in Jammu & Kashmir State for the last many years. There is nothing abnormal in forgoing new business connections in place of the old ones. At any rate it was for Messrs ESSO to take this into consideration.

And more surprising is the statement in paragraph 13 that when the Commercial Oil Co. were appointed cartage contractors it was the partner of Aishi Ram Batra "who approached and solicited this respondent to allow him to work as a sub-agent for the cartage of petroleum products to feed the Srinagar filling station. It was represented by him that they had the necessary arrangements for the purpose whereas this respondent would have to make new arrangements." If this subagency was not given to Aishi Ram Batra "he would have no cartage work and in the result the route permits granted to his company were liable to be cancelled. Under the circumstances he was prepared to pay a lumpsum amount per month to the respondent in consideration whereof his company would be made a sub-agent and permitted to deal directly with M/S Standard Vacuum Oil Co. for carrying fuel in his tankers, and that since for the cartage upto Srinagar his firm would be required to put in more vehicles for which route permits would be required which are liable to be granted to M/S Commercial Oil Company in view of the cartage contract in its favour." Finally he states that Dharam Vir Batra agreed to pay on behalf of his firm Rs. 4,200/- per month and that the work was started from the 1st March, 1961. Ghulam Ahmed further states that he informed the Transport Commissioner that Aishi Ram Batra had been appointed his sub-agent and therefore, the necessary permits may be issued in their favour and gives the dates upon which the several permits were obtained. The original sub-agency was for a period of two years and when it expired in April 1963, it was extended for a further period of two years from the 1st May 1963 to the end of April 1965. Ghulam Ahmed also has annexed, among others, two documents the second of which is from the Standard Vacuum Oil Co to the Transport Commissioner requesting that private carrier route permits may be granted to the Commercial Oil Co who had been appointed as their carriage contractors. As this is merely an intimation to the Government of the appointment of this cartage contractor, I do not see how this very much helps the respondent.

23.12 I shall now proceed to consider the documents on which reliance has been placed by the Learned Counsel for the Government and after narrating their contents with such comments as are necessary, I shall examine the evidence in support of the charge in the light of the defence which has been raised.

23.13 Document 1 is the award of Mr. J. N. Bhat which gives a history of the parent family concern Feroze & Co. from 1948 right up to the end of 1950, but the point to support which it has been filed in this allegation is to show that the branch of Rashid had not obtained any lucrative business in this division and this has already been discussed by me.

23.14 Document 2 is a memorandum of the Transport Department dated 10th May, 1958 under which the monopoly granted to the Burmah Shell for supplying of their products to the three filling stations at Srinagar, Jammu and Lakhanpur was broken and the contract in respect of each was allotted one to each of the three oil companies and Document 3 is the Council resolution by which this proposal of the Transport Controller was accepted.

23.15 Documents 4, 5 dated 12th July, 1958 and Document 6 dated 18th June, 1958 are letters addressed to these three companies regarding the changes made in terms of Documents 2 and 3. The only point to be noticed in these letters is that there is no indication in them that this was intended to be temporary and that the Department intended to have a rotation of these three companies for the three stations.

23.16 Document 7 is a communication by the Traffic Control Department dated 25th September, 1953 to Jodh Singh Gujral & Sons who had been cartage contractors of Burmah Shell Oil Co. They had before the trifurcation 16 permanent permits and three temporary ones for their tankers. By this communication it was stated that there was no need to renew three temporary permits nor eight of his permanent ones. Jodh Singh Gujral evidently resisted this order and we have Document 8 in which the matter is put up for orders to the Transport Commissioner on representation, that the number of permits which he was to retain was not sufficient for his requirements. In the note it is stated that as the lead has gone down as also the quantity to be carried there was no justification for renewing all the permits and it adds—

"We may as a special case and keeping in view that M/S Gujral are refugees from West Pakistan which fact was brought to the notice of the P.M. I hereby order the issue of four more substantive permits in favour of Messrs Gujral."

23.17 Before proceeding further, I shall briefly point out the purpose for which Documents 7 and 8 have been placed before the Commission. In the statement of the case filed on behalf of the Government it is alleged that round about 1958 Abdul Majid sought entry into the partnership of Jodh Singh Gujral and in order to coerce them, Abdul Majid adopted the tactics of getting their route permits cancelled by recourse to the respondent, but that the attempt failed. Abdul Majid to whom notice was issued under Rule 6(1)(a) because of these facts in the statement of the case, denied that he ever approached Jodh Singh Gujral though there have been affidavits filed on behalf of the Government stating that he did. I am, however, taking no notice of these affidavits. Documents 7 and 8 are relied on as documentary proof of the case of coercion and abuse of power on the part of the respondent as set out in the statement of the case. I am wholly unable to accept

this submission. The note contained in Document 8 suggests that the extra four substantive permits were granted as a result of the intervention of the respondent himself - a fact which would negative the story of Majid trying to coerce Gujral by using the respondent. But this apart, this if made out would be an independent item of misconduct and as it is not to be found in the allegation as notified, I cannot obviously take any notice of it. This is sufficient to dispose of that part of the facts stated in regard to this allegation.

23.18 Document 9 is an application dated 10th September, 1960 by Ghulam Jeelani as the proprietor of the Commercial Oil Co. to the Divisional Engineer, Srinagar for the allotment to the firm of a site for establishing a petrol pump for vending the products of Standard Vacuum Oil Co. It is the same as Document 3 in Allegation 9 and I need not repeat what I have stated there as regards this application or regarding the date it bears.

23.19 Document 10 is dated 1st October, 1960 and is the appointment of the Commercial Oil Co. as the dealers for Stanvacs in Srinagar. The points to be noticed as regards this are two: (1) That by this date Commercial Oil Co. had not obtained any site. The decision of Cabinet granting a site to Ghulam Jeelani at Nedou's Hotel being on 29th December, 1960 (Document 11), and (2) that Ghulam Jeelani does not figure here as a contracting party but the Commercial Oil Co. purports to be a partnership composed of Ghulam Ahmed and Mrs. Abdul Rashid.

23.20 After the site was granted to Ghulam Jeelani of the Commercial Oil Co. on the 29th December, 1960, a memorandum was prepared by the Transport Commissioner Mr. S. K. Raina by which the filling stations allotted to the three oil companies were altered. It is stated in this memorandum (Document 12) that the original allotment had been made on 12th July 1958 and that each company had the benefit or disadvantage of the allotment for a period of two years. It was therefore, suggested that the allocation of stations be reported after every couple of years to stop lop-sided share of business going to one supplier. It, therefore, proposed that Burmah Shell be allotted the Jammu filling station, Stanvac (ESSO) Kashmir and Caltex Lakhampur. If one went by this, as a policy decision made by the Government to effect a rotation every two years, there ought to have been a change in January 1963, but there was none such so long as the respondent continued in office and we are not concerned with what happened subsequently. This proposal which was put up to the Minister in charge of Transport Mr. Rajpuri, was accepted by him and Document 12 bears his endorsement to that effect. In terms of the proposal which was accepted in Document 12, letters (Documents 13, 14 & 15) were issued to the three companies directing them to shift their pumps to serve the new places allotted by 1st March, 1961.

23.21 Document 16 is an application by the Commercial Oil Co. signed by Ghulam Ahmed as a guardian of the proprietor minor Ghulam Jeelani dated 7th February, 1961 for the allotment of a petrol pump site at B. C. Road, Jammu. This is the same as Document 14 in Allegation 10 and as this application has been discussed in full there, it is not necessary to say anything about it here. The only point to be noticed is that though under Document 10 dated 1st October, 1960 Ghulam Ahmad and Mrs. Rashid purport to be partners of the Commercial Oil Co. still when an application is made on behalf of the Commercial Oil Co. for the B. C. Road site in February 1961, Ghulam Jeelani is still shown as the proprietor and Ghulam Ahmad being shown merely as guardian acting on his behalf. Why so much mystery should surround the proprietorship of the Commercial Oil Co. and what object was intended to be served by this camouflage I have not been able to comprehend. The Jammu petrol pump station was granted by an order of the Cabinet on 6th April, 1961 though the document of lease was executed in favour of the minor Ghulam Jeelani on 1st August, 1961 (vide Document 20 in allegation 10).

23.22 Pausing here, I might complete the examination of the first part of the charge comprised in paragraph (a) of this allegation. The manner in which the two petrol pumps at Hotel Road Srinagar and B. C. Road Jammu were obtained have been dealt with in Allegations 9, and 10 respectively and there is nothing more to add regarding this, but what we are here concerned with is whether the official position of the respondent was abused or exploited in securing the agency from Standard Vacuum Oil Co. for vending Stanvac oil in these pumps. I find nothing in the document to substantiate this charge. The main part of the Learned Council's submission was that the order for rotation contained in Document 12 by which Stanvac got the advantage of supplying oil to Kashmir which admittedly had a danger turnover than the other stations was a quid pro quo for the Commercial Oil Co. being appointed as the dealers for vending Stanvac oil in their Jammu and Srinagar Pumps. The only circumstance on which reliance could be placed, is the coincidence in point of time when this change came about. But from this factor, without anything more, I feel unable to draw the inference that the arrangement for rotation was a device by which Stanvac were offered advantages in return for the agency granted to the Commercial Oil Co. Reference was also made to the fact that though in Document 12 it was stated that this allotment to the difference oil companies would undergo a change at the end of two years, no change took place in March, 1963 I consider this also much too slender a circumstance on which to base an inference of misconduct, particularly as what is implied is that when the Minister incharge accepted that there would be a rotation every two years he did so on the unexpressed understanding that it would not be given effect to and that the arrange

ment so far as the Government was concerned was to be permanent. I consider this too violent an inference to draw from the mere failure to act up to what was contemplated under Document 12 I, therefore, find that whatever suspension might attach, the first part of the charge is not made out.

23.23 This takes me to the documents dealing with paragraph (b) of the allegation. The letter to Stanvac conveying to them the relevant contents of Document 12 is Document 13 dated 6th February, 1961. The company were directed to have the new arrangement made and completed before 1st March, 1961. Immediately thereafter the company appointed the Commercial Oil Co. as their cartage contractors and this was communicated to the Transport Commissioner by a document which is not in the Government's files but a copy of which has been produced by Bakshi Ghulam Ahmed. In this letter which is undated they say—

"To enable supplies being transported at a very early date, we have appointed Messrs Commercial Oil Co. Srinagar as our cartage contractors"

followed by a request that they may be granted necessary private carrier route permits. By 10th March, 1961 the arrangement between Commercial Oil Co. and Aishi Ram Batra had been completed under which the latter were to act as the sub-cartage contractors. Aishi Ram Batra accordingly wrote Document 17 on 10th March, 1961 to the Registering Authority requesting the issue of six permits for petrol tank trucks for carrying petrol products from Pathankot to Srinagar setting out that they were sub-cartage contractors of Commercial Oil Co. whose letter addressed to the Transport Commissioner for the issue of necessary permits in favour of their sub-agents was enclosed. In this enclosure which is signed by Ghulam Ahmed on behalf of the Commercial Oil Co. there is one point to be noticed and that is the statement that Aishi Ram Batra had been appointed sub-agents "as our vehicles are under

construction of tanks"—a statement which was wholly untrue for they never made any arrangements for construction of tankers nor got any constructed. Evidently, they had no intention either to have any tanker made for themselves, but only to use the tankers of Batra for the purpose of the cartage under an arrangement under which they were to have what was virtually a payment for the route permits which they were to secure, or which their presence in the agency could secure.

23.24 Document 19 is the agreement between Aishi Ram Batra and the Commercial Oil Co. and it was under this documents which was registered, that Commercial Oil Co. had to be paid Rs. 4,200/- per month, the obligation of the Commercial Oil Co. being set out thus :

"Shall be bound to lend all help and assistance to the second party (Aishi Ram Batra) in procuring the route permits (public or private) from Pathankot to Srinagar from the Jammu & Kashmir Government."

The agreement was to be for a period of two years from 1st May, 1961. By letters exchanged vide Document 23 dated 7th May, 1963 the agreement was renewed for a further period of two years from 1st May, 1963 to the end of April 1965. But it was terminated prematurely by Aishi Ram Batra in September 1964, after the respondent went out of office, and this termination was apparently acquiesced in by the Commercial Oil Co. Under the agreement the Commercial Oil Co. undertook to intimate the Stanvac the fact that Aishi Ram Batra were appointed as sub-contractors who would deal directly with the Stanvac without any reference to the Commercial Oil Co. which they did (vide Document 20, letter from Commercial Oil Co. to Stanvac). This was in the circumstances merely a formality. The net result of this arrangement, I might here summarise, was that for all practical purposes Commercial Oil Co. dropped out of the business of cartage, Aishi Ram Batra doing it directly in contract with Stanvac as before, the only difference being that the Commercial Oil Co. getting over Rs. 50,000/- per year in consideration practically of their undertaking to see that the necessary route permits were got to enable his cartage to be effected.

23.25. The existence of direct relationship between Messrs Ch. Aishi Ram Batra and the Standard Vacuum Oil Co. is brought out clearly by Document 21 which is the formal agreement entered into by Stanvac with Aishi Ram Batra and which was to be in force from the 1st April, 1961, under which the contractor Messrs. Ch. Aishi Ram Batra undertook the transportation of their products mentioned in the agreement at the rates specified for a period of one year. The agreement was renewed by Documents 26 and 29, the first for the period 1st April, 1962 to 31st March, 1963 and the other carried it up to 31st December, 1964.

23.26. Immediately after their agreement with the Commercial Oil Co. two private carrier permits were issued to Messrs Ch. Aishi Ram Batra on the route Srinagar to Pathankot for the carriage of petroleum products. Messrs Ch. Aishi Ram Batra addressed a letter to the Transport Commissioner on 23rd June, 1961 (Document 23) in which they stated that they had applied on 10th March, 1961 for the grant of at least seven tank lorries permits of which two had already been granted (Document 22) and three were obtained subsequently. The request was, to sanction three not two more permits to meet their requirements. The notes made on this representation are contained in Document 25 by which seven temporary and two substantive permits were granted.

23.27. Documents 30 to 63 are extracts from the relevant pages of the books of account maintained by Aishi Ram Batra evidencing payments made to the Commercial Oil Co. under what was termed their sub-cartage contract. The correctness of this account has not been challenged and so I am setting down the figures of payments received by the Commercial Oil Co. during the several years. They were paid

in 1961-62	Rs. 55,372.90
in 1962-63	Rs. 69,526.80
in 1963-64	Rs. 75,880.80

and for the period from 13-4-64 to 10-9-64 when the arrangement was terminated by Messrs Aishi Ram Batra and they ceased to make payments .. Rs. 33,880.14

As stated earlier the amount of remuneration was increased from Rs.4,200 per month to Rs. 5,000/- per month after the first year and to Rs. 75,000/- in the third year.

23.28. I have now set out the documents and the nature of the transactions by which the wife and brother of Abdul Rashid were able to net a handsome profit by merely figuring as transport contractors without performing any real function and undertaking no real liability to the Stanvac. In other words they were paid this consideration ranging from over Rs. 50,000/- to Rs. 75,000/- a year merely for lending their name to a nominal agency in which they were, if one may coin a phrase, sleeping principals. It is the case of the Government that they were enabled to do this by reason of the fact that the route permits which were necessary to be obtained for transporting the oil under the cartage

contract, would have been available only to them or at their instance, because they were strictly controlled by the respondent. It was further urged that if Messrs Ch. Aishi Ram Batra could have obtained these permits without the intervention of the proprietors of the Commercial Oil Co., there is no reason why they should make payments of these enormous sums for these nominal cartage contractors. Looked at from the other side also, that is from the side of the Stanvac themselves, it was pointed out that they were eager and interested in having their products carted so as to enable them to take advantage of the benefits that they got out of the rotation, but in order to effect this purpose they had necessarily to find a contractor who had the capacity to move these goods and the goods could be moved, even if one had the vehicles, only by obtaining route permits. They had, therefore, it was urged to approach and seek the assistance of one who could obtain these route permits and it was precisely for this reason, just as in the case of Bashir Ahmed's contract with the Indian Oil Co. already dealt with in connection with the charge in Allegation 27, that they happened to fix up a close relation of the respondent who alone could literally speaking deliver the goods.

23.29. Pausing here, I might refer to the submissions contained in the reply of Ghulam Ahmed. According to him it was really a fortuitous coincidence that Stanvac approached him for taking up the cartage contract and for which he says Stanvac must be asked. He has, however, no explanation as to why Messrs Ch. Aishi Ram Batra who had been the cartage contractors from 1948 onwards, were suddenly dropped in 1961 when the business of Stanvac improved by their being allotted the Srinagar filling station and larger quantities of petroleum and petroleum products had to be carted from Pathankot. Of course, it was not suggested that the ESSOs had any complaint against the manner in which Aishi Ram Batra was fulfilling their contract, and if proof was needed that the oil company was satisfied with their previous contractors, it is to be found in the manner in which they entrusted the carrying out of the carriage contract to them even after the Commercial Oil Co. became the so-called contractors. Bakshi Ghulam Ahmed has no explanation to offer as to why ESSOs should choose him, except to say that ESSOs must be asked. What I desire to point out is that he does not say that they found some merit in him—other than what the Government suggest—to prefer him to Aishi Ram Batra.

23.30. In this connection certain matters have to be mentioned. In the first place the Commercial Oil Co. had no experience of oil cartage business. Bakshi Ghulam Ahmed states in his reply that this cartage contract was nothing phenomenal, meaning thereby that anyone could enter the business and that it needed no previous knowledge or experience. But this is forgetting that experience does count a lot in the business, because the cartage involves an intimate acquaintance with the provisions of the Petroleum Act and the Rules made thereunder, as well as other Government regulations relevant to the subject and the practical knowledge of their working. Secondly, it involved knowledge and experience of the maintenance and repair of the special type of vehicles involved in petroleum cartage. Experience, therefore, was a matter of considerable importance in this field. Apart from their

inexperience, the Commercial Oil Co. did not bring into the venture any equipment or tankers of their own for they possessed none and had never intention of possessing any. Nor had they in their service or under their control staff needed for running these vehicles not to speak of repair facilities for the vehicles. In other words, they brought to this undertaking no past experience, no capital or wherewithal, no equipment, no facility, no organisation, in fact nothing except their close relationship to the respondent.

23.31. Not having brought anything into the business, the question immediately arises what was the inducement to Stanvacs to choose them as their carriage contractors, and more than that for Messrs Ch. Aishi Ram Batra to agree to pay these enormous sums of monies month by month to the Commercial Oil Co. I can find no answer except that it was through or on account of the latter that the route permits for the tankers were or could be secured.

23.32. The respondent, however, claims that he never controlled the issue of these route permits and that, therefore, the charge against him that he abused his power or that his power was exploited for securing route permits by the Commercial Oil Co. is false. As regards his general defence about the manner of issue of these route permits, the documents relevant to the question have been filed in Allegation 27 and have all been discussed in great detail there. Besides, the respondent himself says that he has set out his case in reply to that allegation. In view of what I have stated there and the conclusions that I have reached, I consider that his statement in the reply is not justified by the facts and that on the other hand the respondent did exercise such a degree of control by which substantive route permits, particularly on long routes, could not be issued except on his orders. Having regard to the case with which on a letter from the Commercial Oil Co. Messrs Ch. Aishi Ram Batra obtained these route permits, I am satisfied that they have been obtained only because the respondent must have expressed his willingness to have them granted.

23.33. In this connection I have to notice a challenge made by Ghulam Ahmed requiring the Government to point out if there is any case where a route permit for transport of such an essential commodity as oil has ever been refused. This is a challenge which even Bakshi Bashir Ahmed has not made in his reply to Allegation 27. I consider the explanation for this is that he was unaware unlike Bashir Ahmed to whom notice having been issued in regard to Allegation 27, had an opportunity to examine the contents of Document 9 read with Document 17 in that allegation, which clearly shows the difficulty entertained by even a co-operative society backed though it might have been by Secretaries to Government, in obtaining a permit for transporting kerosene of the Indian Oil Co. for the benefit of the general public.

23.34. The result of this discussion may now be summed up. Though I consider that Government have not been able to establish beyond reasonable doubt the charge as formulated in paragraphs (a) and (c) of Allegation 19, they have, however, established the charge in

paragraph (b) of Allegation 19, namely, that by the abuse or exploitation of the official position of the respondent in the matter of the issue of the route permits the Commercial Oil Co. were enabled to obtain a large pecuniary benefit to themselves. It has already been stated that the total amount received by the Commercial Oil Co. for this nominal agency which existed only for receiving these payments came to Rupees 2,34,660.00.

24.1. I shall next take up a charge in relation to a benefit conferred on Abdul Majid just at the time or soon after the break up of the family at the end of 1960. I have already referred to Abdul Majid having commenced a petrol pump business as early as 1954. At this pump he was dealing in the products of Burmah Shell Oil Co. and its site was on the kerb of the property which he had purchased in 1951 on the Residency Road. As early as 1958, it was found that the site where this pump was located was unsuitable having regard to its proximity to the Highway and an order had been passed by the Engineering Department of the State directing its removal to a place not open to such objection. But this order had not been given effect to, in the sense of compelling the proprietor to remove the pump, though evidently as would appear from the notings on the files efforts were being made by Government and Abdul Majid to find an alternative site to which to shift. By the arrangements which were come to by the end of 1960 among the members of the respondent's family the building of Fairdeal Motors Srinagar on the curb of which the pump was located fell to the share of Bakshi Bashir Ahmed and from 1st January, 1961 Abdul Majid ceased to have any proprietary interest in that property. He was, therefore, in urgent need to shift this pump to some other place.

24.2. It is the case of the Government that the respondent by the abuse of his official position made available to Abdul Majid a site in Bonamsar, one of the very busy localities in the city opposite the Amar Singh Club by charging him a nominal premium for the lease of the site contrary to the rules. This is the charge contained in Allegation 11 which reads as follows :—

“Bakshi Ghulam Mohammad caused undue pecuniary advantage to Shri Anwar Aftab, minor son of Bakshi Abdul Majid by getting 2 kanals of land at Bonamsar, Srinagar leased out to him in 1961 at a fixed premium of Rs. 2,000 per kanal in violation of the rules. The area leased out was illegally increased by the lessee by encroaching upon an area of about 12 marlas and 106 sq. ft. of Government land.”

24.3. As would be apparent from its terms, the charge against the respondent is (1) that a lease in violation of the rules and for an inadequate premium was granted to Anwar Aftab, minor son of Abdul Majid, of a site for a petrol pump at Srinagar, and (2) that the lessee encroached upon the neighbouring land belonging to the Government to an extent of 12 marlas 106 sq. ft. and that this was done taking advantage of the respondent's position as Prime Minister.

24.4. "Kashmir Oil Co." was the name in which Abdul Majid was carrying on his business at the Residency Road, Srinagar. On 26th August, 1960 the Divisional Engineer wrote a letter to the Kashmir Oil Co. requiring the pump to be shifted to a suitable site, as the then existing location was dangerous and was contrary to the Explosives Act and the Indian Road Congress Rules (Document 1). On 4th November, 1960 (Document 2) the Kashmir Oil Co. replied to the Divisional Engineer stating that they would shift to a site at Bonamsar if that were allowed and they enclosed a plan of the site which they desired to be granted to them in place of their old one at Residency Road. The Divisional Engineer on receipt of this letter wrote to the Chief Engineer, Public Works Department, stating that as the firm was being asked to shift at Government's instance, an alternative site had to be provided for them as was usual in such cases (vide Document 3) and the Chief Engineer in his reply on the same day (Document 4) stated that there was no objection to the resiting of this petrol pump at the place indicated in the plan and finally we have Document 5 dated 14th November, 1960 from the Chief Engineer to the Development Secretary pointing out that the site at Residency Road where the pump of the Kashmir Oil Co. was situated was dangerous and that an alternative site had to be provided because it was being shifted at Government's instance and, therefore, that the sanction of the Government might be obtained for the grant of the land at Banamsar. This closes what might be termed the first part of the story as regards the grant of this lease.

24.5. Before proceeding further, it is necessary to notice a point made by Mr. Khaibata, learned counsel for the Government, that the Kashmir Oil Co. were merely trespassers on the Residency Road pump-site and that, therefore, they were not entitled to the grant of an alternative site wherein to shift their pump and that the recommendation of the Engineering Department that under the rules and the practice obtaining in the Department, Kashmir Oil Co. was entitled to be granted an alternative site was without justification. To appreciate this point it is necessary to travel back into the earlier history of the site on Residency Road. This petrol pump site had originally been leased to a concern called the Bengal Motor Stores, who appear to have had their pump there from about 1939. While the Bengal Motor Stores were operating this pump of Burmah Shell which was on the kerb of the road in front of the present Fairdeal Motors, they were paying to the Public Works Department a rent of Rs. 62.50 per year for the use of the roadside. Bakshi Abdul Majid purchased in 1952 the site on which the Fairdeal Motors buildings were later constructed. An employee of Bengal Motor Stores, Kashi Nath Kaul has stated in an affidavit that after the purchase of this neighbouring land by Abdul Majid, he was insisting that the petrol pump should be removed therefrom on the ground of its being inconvenient to him and this appears to me to be probable. But whether or not the efforts of Abdul Majid were effective, on 28th January, 1953 the Public Works Department wrote a letter to the Bengal Motor Stores to shift the pump from that site as it was a source of hindrance to the traffic. Thereupon the Bengal Motor Stores appeared to have vacated the property in 1954, but evidently no notice had been given to the Public Works Department immediately regarding this shifting and we have in Document 37 dated 13th October, 1961 a letter addressed by

the Bengal Motor Stores to the Divisional Engineer, Construction Division, in which they state that they handed over khas possession of the pump site in March, 1954 and shifted to their own premises on the Hotel Road. It was only on receipt of this letter that entries were made in the rent register (Document 38) regarding their having quitted the site, but up to that date, as would be seen from the cash book of the Construction Division for 1958 (Document 39), the rent due had been paid apparently by the Burmah Shell Co. to whom the site had been sub-leased by Bengal Motors for erecting the pump. The Government registers do not show the name of the Kashmir Oil Co. as the lessee in respect of this site from 1954, but the fact undoubtedly was that they were in occupation. On the basis of these facts and documents Mr. Khambata submitted that Kashmir Oil Co. had really no title or rather no valid title to occupy the land as there was no formal lease by the Public Works Department in their favour nor are they shown to have paid any rent to the Government and that in these circumstances they should be deemed to have been merely trespassers and if they were really trespassers they were not entitled to be allotted as of right an alternative site for shifting their pump. I am unable to accept this submission of the Learned Counsel. In the first instance we do not have the exact date when the Kashmir Oil Co. came on the scene. Possibly if the story that Abdul Majid desired that the Bengal Motor Stores should quit the site is accepted and as I have said earlier it looks probable, then it looks very likely that the site was occupied for running a petrol pump by Abdul Majid himself which would mean that the Kashmir Oil Co. were operating this pump from 1954 onwards. As the lease or licence granted to the Bengal Motor Stores had not been terminated by the Government by any formal order, it appears to me that the proper legal view to take is to treat the Kashmir Oil Co. as really the successor in interest of the Bengal Motor Stores as regards the licence to run the petrol pump, seeing that it was a licence coupled with an interest, structures having been erected by the licensee. It is seen from the records that right up to about 1958 the registers show payment of rent at Rs. 62.50 per annum for this site. Therefore, in law it might not be possible to treat the Kashmir Oil Co. as trespassers at least not so long as no notice to terminate the licence was given, particularly as rents were being paid and were being received. If after 1958 no claim was made for the rent, that by itself would not turn the Kashmir Oil Co. into a trespasser until a notice to quit was served on them. Even otherwise, they cannot be held to be trespassers. Even when the Bengal Motor Stores were operating the pump, it looks to me as if the Burmah Shell were themselves paying the ground rent to Government though in the name of the licensee. From the circumstance that the Burmah Shell were paying the ground rent, it looks to me as if there was some arrangement under which the Burmah Shell were holding something like a sub-lease or sub-licence of the site, for they erected the pump which was on the site. In the correspondence we find that though the Bengal Motor Stores say that they had removed themselves from the site, it is not stated that the pump and the installations were removed. If, therefore, the Burmah Shell had an interest in the plot, they were paying the rent due to the Government and they had erected the pump, it looks most probable that that pump which was operated originally by the Bengal Motor Stores, came to be operated by the Kashmir Oil Co. when they

stepped on the scene with the consent of the Burmah Snell. Otherwise it is not possible to explain why the Burman Snell Company should be paying the ground rent of the site to the Govt. right from 1954, when the Bengal Motor Stores removed themselves from the plot, to 1958. If I am right so far it looks as if there is no question of the Kashmir Oil Co. being a trespasser or *vis-a-vis* the Government not being entitled to claim the right to operate the pump. The submission, therefore, that the Kashmir Oil Co. were trespassers and that, therefore, they were not entitled to the grant of an alternative site when Government directed them to shift from the place where they were having their pump is not made out. The result is that I hold that the Kashmir Oil Co. was lawfully in possession of the site and that under the practice usually followed in such cases when the Government directed the shifting of the pump from there, they were under an obligation to provide an alternative site.

24.6. The legal position apart, the question now under consideration has to be decided on the basis of the Kashmir Oil Co. being lawfully in possession of the site, because it is not shown that the earlier history of this was known to or appreciated by those who made the proposal that an alternative site should be provided for the company.

24.7. There is another matter on which some comment was made by Mr. Khambata, Learned Counsel for the Government. It was said that though Government had issued a notice as early as January, 1953 to the Bengal Motor Stores to remove the pump from the site on the ground that the same was an obstruction to the traffic and had insisted on Bengal Motor Stores vacating the place which they did in March, 1954, still no steps were taken to enforce that order when Abdul Majid came on the scene, occupied the pump and was carrying on the business of a dealer in petrol at that spot. The suggestion was that the failure to take steps to enforce the order was really due to the circumstance that Abdul Majid was a brother of the respondent and that the failure to get him out of the place was due to the intervention of the respondent or to abuse of power on his part. I am, however, unable to agree with this submission for more than one reason. The precise reasons why there was this delay of nearly seven years in issuing notice to Kashmir Oil Co. to quit the premises is not clear from the files, but besides—and this is a more serious objection—this charge of abuse by reason of the failure to insist upon Kashmir Oil Co. vacating that site is not in the allegation as notified or even in the statement of the case filed by the Government and which the respondent was called on to answer. I do not, therefore, propose to take any notice of this submission made by the Government, however inexplicable the delay to enforce compliance might seem.

24.8. The second state in the history of the matter which is the subject of this allegation starts with an application by Anwar Aftab, a minor by his father and guardian Abdul Majid for the grant of a site in Survey No.73 in village Bonamsar. It was not stated in this application (1) that it was for a petrol pump, (2) that it was for or on behalf of the Kashmir Oil Co., and (3) that it was for the purpose of shifting their pump from the Residency Road.

24.9. This application (Document 6) was filed on 2nd January, 1961. The date is of some significance because, Abdul Majid as proprietor of the Kashmir Oil Co. had originally applied for the grant of a plot of land included in Nedou's Hotel to serve as an alternative site. That application, however, he abandoned stating that in view of his contemplating other sites he was not interested in the Hotel Road plot. Thereafter, as would be seen from the facts narrated in connection with Allegation 9, Ghulam Jeelani, minor son of Abdul Rashid had made an application for the grant of the site in Nedou's Hotel and his application had been granted by the Cabinet on 29th December, 1960. That having been achieved, the application for the Bonamsar site was made on 2nd January, 1961. Soon after this application was made it was presented to the Tehsildar Nazul, Srinagar, an inquiry was held and the statement of Abdul Majid was recorded. Even in this statement (Document 7) he said that he had requested that an area of 5 kanals and 15 marlas and 20 sq. ft. part of Survey No. 73 might be granted to him. Though Ghulam Jeelani had been granted a lease on terms of his paying no premium, Abdul Majid added that he would pay a premium of Rs. 500 per kanal. Here again the point noticed is that even in the statement on oath no reference was made (a) to the plot being required for a petrol pump or (b) that the site was being obtained as an alternative site. The statement was recorded on the 10th January and the Tehsildar addressed a communication (Document 9) to the Administrator, Municipal Committee, Srinagar on the same day inquiring if the municipality had any objection to the plot applied for, being leased and got a reply on the same day stating that they had none. Also on the same day 10th January, 1961 the Tehsildar addressed Document 10 to the Director, Land Records, for obtaining his sanction and for ascertaining the ground rent payable. The Director of Land Records immediately thereafter forwarded a note to the Financial Commissioner recommending the grant of the lease and expressing the opinion that Rs. 500/- per kanal offered as premium was reasonable. The Financial Commissioner while agreeing that the lease might be granted, however, suggested that the premium might be Rs. 1,000 per kanal instead of Rs. 500/- as offered and that this would be in addition to the ground rent payable under the rules which had just then come into force (Document 12). The application was then forwarded with this note to the Revenue Secretary. The notings of the subordinate officers in this Department as well as those higher up are to be found in Document 13. The first note is, that as apparently there would be no open auction of the land, as required by the new rules for determination of the premium, the papers were being put before the Revenue Secretary and Revenue Minister for orders as to consulting the Finance Department, before being put up before the Council, as required by the rules.

24.10. This note of the office was made on 17th January, 1961 and it was concurred in by those higher up. The final orders of the Minister Mr. Dinanath Mahajan on 18th January, 1961 when the papers were put up before him, make interesting reading. He said—

“As recommended by the Financial Commissioner Council sanction may be sought.”

If one goes to the recommendation of the Financial Commissioner, there is no suggestion there that the Finance Department who had, under the rules of Business, to be consulted, were to be bypassed. That was not how his Secretariat understood it as I have already pointed out, for the Revenue Secretary said on 17th January, 1961 before the paper was placed before Mr. Mahajan—

“May the case be submitted to Council of Ministers for grant of Nazul land.....after consultation with the Finance Department as land is not being put to auction as required under rules.”

The text of the note of the Financial Commissioner affords no justification for the inference drawn by Mr. Mahajan that he suggested that the Finance Department need not be consulted before the matter was put up to the Council. Except for varying the figure of the premium to be charged the Financial Commissioner suggested no change in the procedure to be followed.

24.11. The matter was put up to the Council on the orders of Mr. Mahajan extracted just now without the matter being referred to the Finance Department and in this (Document 14 dated 4th February, 1961) is a bland statement that the Financial Commissioner had suggested a premium of Rs. 1000/- to be charged instead of Rs. 500/- suggested by the subordinate officers and that the land had not been put to auction as required under the rules. Here again, it should be pointed out that no reference was made to the fact that the Finance Department had not been consulted and it contained the recommendation of Mr. Mahajan that the lease might be granted on a premium of Rs. 1000/- per kanal. This memorandum was put up to the Council of Ministers, but the resolution suggested by Mr. Mahajan was not passed. It is not clear from the file as to why it was received back from the Council without any orders.

24.12. What next we have is a noting in the Revenue Secretariat (Document 15) that as the land in question is required for a commercial purpose and the premium is not being fixed by an open auction as required by the rules, the rules required that it should be referred to the Finance Department for their concurrence before the issue of any final orders, and then occurs the sentence which I have not been able to comprehend fully:

“The Revenue Ministry should, however, support the recommendations of the Financial Commissioner for fixation of premium at Rs. 1000/-per kanal besides the ground rent.”

and then followed another note:

“May the case be referred to the Finance Department U.O. in the first instance as it involves relaxation of the rules.”

This is note No. 8 and is dated 28th February, 1961. What exactly happened at this stage is not clear, though if I should venture a guess

based on the subsequent notes, a justification for avoiding reference to the Finance Department was found by making out that Anwar Aftab's application being really for an alternative site and he was entitled to one as of right and so no such consultation was necessary. Possibly it was felt that if it went to the Finance Department, the charging of a premium as market rates might have been suggested, which would embarrass later processing. I say this because now on we find the Kashmir Oil Co. appearing on the scene or rather brought out openly and the grant of the lease is being connected with the need for providing an alternative site to the one directed to be shifted from the Residency Road, a matter which was strangely missing from the files for quite a time.

24.13. It appears to me, on an examination of these files that an attempt was made, if possible, to get two sites, one for Anwar Aftab in his own name without reference to the Kashmir Oil Co. and if that succeeded try to get a second site for the Kashmir Oil Co. on the basis of the need to provide an alternative site. The reason why this scheme failed is not clear from the files, but what we find is that from April, 1961 this application by Anwar Aftab himself is treated as an application for the alternative site by the Kashmir Oil Co.

24.14. Though paragraph 8 dated 28th February, 1961 of the note (Document 15) suggested a reference to the Finance Department before the matter was put up to the Council, this course was not pursued and this was avoided by pointing out that Anwar Aftab was really applying as proprietor of the Kashmir Oil Co. though his connection with the Kashmir Oil Co. was not brought out in the correspondence from January, 1961 up to this date and there was nothing to suggest that the application made by Anwar Aftab on 2nd January, 1961 (Document 6) was by him on behalf of Kashmir Oil Co. In the next note in Document 15 the fact that the application of Kashmir Oil Co. had passed through the Divisional Engineer and Development Secretary etc. was noted (vide Document 3 and 5) and the suggestion was made that the case may be straightway submitted to the Council of Ministers for orders and that the Development Department who had been addressed by the Chief Engineer in Document 5 might be informed later. On the note a memorandum (Document 16) was drawn up for being placed before the Council without the question of the grant of the lease being referred to the Finance Department. In Document No. 14 which was the previous memorandum prepared for submission to the Council there was, as I have already pointed out, no reference to the fact that the lease that was being granted was for the purpose of providing an alternative site to the Kashmir Oil Co. Now, however, for the reasons I have indicated already Anwar Aftab's application is stated to be an application on behalf of the Kashmir Oil Co. for being provided with an alternative site at Bonamsar and the earlier correspondence (Documents 3 to 5) are recited here in order to establish the necessity for the grant. So far as the premium is concerned, it will be recollected that Abdul Majid on behalf of Anwar Aftab had made an offer of Rs. 500/- per kanal and though the subordinate Nazul officers had agreed that this was reasonable, the Financial Commissioner had raised it to Rs. 1000/- per kanal. In the memorandum now prepared dated 19th April, 1961 (Document 16) the rate of premium as suggested by the Financial

Commissioner is recommended for adoption by the Council. But the more important thing is that it is not pointed out in the memorandum that there had been no consultation with the Finance Department, which was essential, under the rules, if the premium was not to be determined by open auction and it was a memorandum in this form that was approved by the Minister for being placed before the Cabinet.

24.15. But here again a hitch occurred which if it had not occurred the proposal of Mr. Mahajan in this form would have gone through. At the stage when it was being marked for the Council it was brought to the notice of the Revenue Secretary by the Deputy Secretary in the General Department that whereas the application was for the grant of an area of 5 kanals 15 marlas and 72 sq. ft. of land, that extent of land was not available on the spot for grant, but only 2 kanals. The matter was, therefore, not placed before the Cabinet immediately and investigation went on by the Revenue Secretary asking the Financial Commissioner to find out the position "on the spot" (vide Document 18 dated 10th May, 1961). The report that was submitted (Document 19) showed that some portion of this Nazul land had been encroached upon by strangers. While efforts were being made for removing the encroachment, it was considered necessary that some land should be granted for Abdul Majid for putting up the petrol pump. In this situation the Minister Mr. Mahajan took a hand in the matter and noted on the file (Document 20 note No. 12) that the grant of 2 kanals of land in khasra 73 in favour of Anwar Aftab be made but that the premium might be raised to Rs. 2,000/- per kanal and he directed that a revised draft memorandum as per these verbal orders be placed before him for approval. Accordingly, a fresh memorandum for being placed before the Cabinet was prepared (Document 21 dated 26th July, 1961) in which after setting out in identical terms the history as stated in the earlier memorandum dated 19th April, 1961, the fact that a portion of the land had been encroached upon and was not available for immediate grant of possession was pointed out and then the Minister's recommendation ran in these terms:—

"Keeping in view the urgent need of the applicants the Revenue Minister recommends the grant of 2 kanals only from out of Khasra No. 73 on payment of a premium of Rs. 2,000/- per kanal as premium without determining the same in an open bid and ground rent as may be prescribed by the rules."

Here again it should be pointed out that there was no reference to the fact that the Finance Department had not been consulted as required by the rules. This was put up before the Council on 3rd August, 1961, but before that date, the Secretary of the General Department had noted on 29th July, 1961 on another file which was similarly put up (Document 23):

"It is a point for consideration whether in cases of grant of lease of land where premium has not been fixed on the basis of open auction as normally required under the rules, Finance Department's consultation is not necessary before the case goes to the Council for orders. May be marked for Council."

When put up to the Council the same was sanctioned and in the Government Order that was issued (Document 11) in pursuance thereof, the Nazul Department officers were directed to proceed to the spot and hand over possession to the lessee. This completes the narrative so far as the grant of the lease is concerned.

24.16. The other part of the allegation concerns the charge that the lessee encroached upon 12 marlas and 106 sq. ft. of land contiguous to the property leased out to him and that this was done with the knowledge and connivance of the respondent. It would be convenient to deal with the second part of the charge after I have completed the discussion of the main charge in this allegation.

24.17. It was evident that Mr. Mahajan was the person who played the main part in getting this lease granted and who in essence was party to the irregularities which have been stressed by Learned Counsel for the Government in respect of this grant of land, namely (1) there was no reason why an auction was not held to determine the premium payable by the applicant, (2) assuming for any reason that it was either inconvenient or inadvisable to have a public auction, the rules already referred to require that the Finance Department should be consulted. This was not merely not done but deliberately omitted to be done even when the rule in question was repeatedly on several occasions pointed out by the office notes which have already been set out, and (3) the premium fixed was too low and was fixed at that figure in order to confer an advantage on the applicant. In view of these features, I thought that it was necessary that notice under section 10(1) of the Act should be issued to Mr. Mahajan who was then the Minister incharge and who had passed the orders to which reference has been made already, before I should record any finding in respect of this charge.

24.18. As in the case of the notice in respect of Allegation 10, Mr. Mahajan appeared before me and after the gravamen of the points made against him were explained to him by Mr. Khambata, learned counsel for the Government, he took time to file a sworn statement and he did so on 17th October, 1966. But as I considered that this statement might need some explanation which Mr. Mahajan would be willing to offer, I had a notice issued to him inviting him to appear before me on the 5th December, 1966 if he so desired in order further to explain what he had stated. Mr. Mahajan, however, replied saying that he had nothing to add to his statement and I, therefore, proceeded to deal with his reply on the basis of the statement which he filed.

24.19. The explanation that he offers for the failure to consult the Finance Department sounds very curious and has only to be stated in order to see its irrelevance. After stating that he agreed with the recommendation of the Financial Commissioner that Rs. 1000/- per kanal be fixed as premium, Mr. Mahajan stated: "The Finance Department could not advise us as to the reasonableness of the premium; the only advice which they could tender could be to ascertain the amount by auction." It really passes one's comprehension to find a responsible

Minister who is now a practising advocate making this observation, because the rule requires that only in cases where the premium is not determined by auction that the Finance Department has to be consulted. If, as Mr. Mahajan appears to believe, the papers had been circulated to the Finance Department they would have expressed the opinion that this was not a case where there could be no auction, it would point to the impropriety of his order by which he directed that there need not be any auction. But that apart, as it was only in cases where the premium was not determined by auction that the Finance Department had to be consulted according to the rules, it appears to me that their consultation was sought for the purpose of their making suggestions as to the proper premium that ought to be fixed having regard to the other cases where premium has been determined by auction or even other cases where premium has been fixed without reference to an auction. The point made against the order passed is that the Finance Department was deliberately bypassed in order that there might be no noting on the file which would suggest a higher premium than what the Minister was prepared to recommend and on this answer of Mr. Mahajan it is clear that it is precisely this which he sought to achieve and did achieve by not having the application referred to the Finance Department.

24.20. The next point to which it is necessary to refer in his reply is as regards the contents of the memorandum dated 19th April, 1961 and in regard to this his reply is that all the facts were mentioned in it. The point made by the learned counsel for the Government was that the circumstance that the Finance Department was not consulted was not mentioned in it and that this was deliberate. This point though it was brought to the attention of Mr. Mahajan when Mr. Khambata made his submissions in his presence, the matter is not even adverted to in the reply that he has filed and, lastly, he takes credit for increasing the premium from Rs. 1000/- per kanal to Rs. 2000/- per kanal in the final order that was passed. This, however, only shows how Mr. Mahajan has been proceeding merely with a view to help the applicant. If really he had been so minded, there was no difficulty in his ascertaining the price which could be obtained in that vicinity, but he deliberately refrained from doing so and having recommended Rs. 1000/- per kanal in April, 1961, recommended Rs. 2000/- in July, all of which shows that he was not seriously minded to protect the interest of Government which as a Minister he was bound to do. It was only by an accident that the grant of 5 kanals 15 marlas of land which he had recommended for being granted on lease in April 1961 at Rs. 1000/- per kanal did not go through and for this certainly he cannot claim any credit. Again in respect of Document 21 which is the memorandum on which the Cabinet finally sanctioned the lease and in this connection he refers to the notes in which the matter put up for consideration by the Council of Ministers included applications involving (a) relaxation of the rules requiring open auction and (b) consultation or otherwise of the Finance Department, but this, however, misses the point in that the memorandum drawn up in the present case on which the Council resolution was passed (Document 21) did not in terms say that the Finance Department had not been consulted.

24.21. And, lastly, as to the premium of Rs. 2000/- being too low in regard to which learned counsel for the Government produced

material to show that a neighbouring piece of land of 2 kanals adjacent to the present property fetched Rs. 11,500/- at an open auction, Mr. Mahajan observed after admitting that if put to open auction it might have fetched a higher price ; "this may be so but a person is interested in purchasing an immovable property just adjoining his own." This, however, would not explain the next higher bid and several below it, which were by people not owing adjacent properties. He then adds about the procedure for auction not being possible of observance in cases of leases for petrol pumps which, as I have pointed out when dealing with Allegation 10, is not correct. But, in any event, if the plot could have fetched a higher premium if it had been put to open auction, then that figure ought to have been ascertained by proper inquiry and the interest of the State should not have been sacrificed in the manner in which it has been done in the present case.

24.22. The result of this discussion, therefore, is that there has been an irregularity in the manner in which the application was processed without being referred to the Finance Department and its opinion not being ascertained with the result that the plot which could easily have fetched at the least Rs. 5,000/- per kanal has been leased on a premium of Rs. 2,000/- and I consider that Mr. Mahajan as the Minister in charge must be held responsible for this irregularity and this loss to the State.

24.23. I shall now proceed to deal with the case of the Government as to the part played by the respondent in getting this lease granted before taking up the second part of the allegation regarding the encroachment. In the statement of the case, the following points are made to implicate the respondent with either a direction or connivance. It was the respondent who while walking along the Residency Road with the Chief Engineer Mr. Wanchoo pointed to the petrol pump of Kashmir Oil Co. and desired the Chief Engineer to recommend the removal of the petrol pump and the allotment to the Kashmir Oil Co. of a plot in Bonamsar and that it was as a result of this intervention on the part of the respondent that the letter dated 26th August, 1960 was addressed to the Kashmir Oil Co. requiring them to shift the pump. No doubt it was on the basis of this notice to shift that so far as Kashmir Oil Co. was concerned the claim to the alternative site was made. In regard to this statement the respondent has in his reply denied the entire story and not being content with that, has stated that he had never made a recommendation of this type in respect of any petrol pump. The last, however, appears to be an overstatement because from the files it is clear that the respondent has done things of the type suggested by the Government in their statement of the case in regard to other petrol pumps. For instance, in File No. 20/NH of the office of the Divisional Engineer, Kashmir National Highway on page 13 is a letter by the Divisional Engineer to the Chief Engineer No. 3109-12 dated 6th March, 1956 which refers to the Prime Minister giving orders that the existing tonga stand should be shifted from the present position and re-fitted in the garden of the Nedou's Hotel and that the petrol pump site is approved by the Hon'ble Prime Minister to be shifted back beyond the railing into the vegetable garden of the Nedou's Hotel. Again in the same file on page 25 in a letter dated

6th March, 1956 by the Divisional Engineer National Highway to the Chief Engineer Public Works Department this officer writes:

"The Hon'ble Prime Minister on 4th March, 1956 personally went round and proposed the shifting of the pumps as under"

and then follows a list of five pumps which have been directed to be shifted and the last paragraph adds:

"The verbal orders of the Hon'ble Prime Minister may kindly be got confirmed. The pump owners are being informed to make necessary arrangements for shifting of their pumps to the proposed new sites."

Perhaps of more immediate relevance is the letter of Abdul Majid himself, Abdul Majid states in this letter dated 20th July, 1960 which he writes as proprietor of Kashmir Oil Co.—

"KASHMIR OIL COMPANY

Residency Road,
Srinagar.
July 20, 1960.

The Divisional Engineer,
Roads Division,
Srinagar.

Dear Sir,

Enclosed kindly find the site plan of the proposed Mobilegas/Mobildiesel pump opposite Regal Cinema furnished by M/S Standard-Vacuum Oil Company on our behalf.

"As will be recalled some time back the Hon'ble Prime Minister allotted in your presence the plot of land opposite Regal Cinema to us for resitement of our existing pump, situated at Residency Road.

"To enable construction being started we request you kindly to issue a no objection certificate in this regard early.

"Thanking you in advance,

Yours faithfully,

For Kashmir Oil Company

ABDUL MAJID.

No.20 NH/16500-1 dated 24-9-1960

Copy along with copy of plan forwarded to :—

1. S. E. Kashmir.
2. Transport Commissioner

for favour of remarks.

C.E." (vide File No. 20
NH Part II Chief Engineer
P.W.D. page 1)

There are two observations I desire to make on this letter. The first is that there is no written confirmation of this verbal direction, which is clearly established, and so the claim of the respondent that in the absence of a written confirmation, it should be taken that he passed no verbal order, is wholly unjustified. The second is, as regards the reason why I hold, notwithstanding the proximity of the date of this letter to the order of the Divisional Engineer to Kashmir Oil Co. to vacate their premises, that this letter does not prove the case of the Government as regards the direction spoken to in the affidavit of Mr. P. N. Wanchoo. The new site suggested is opposite Regal Cinema and not in Bonamsar. Though it is thus found that the respondent has inspected petrol pumps and suggested shifting of them to new sites including the shifting of the pump of the Kashmir Oil Co. and has also pointed out the places to which these should be shifted, this, however, does not fully establish the case which the Government have to prove. They have still to show that the respondent suggested the Bonamsar site and in support of this there is nothing except the statements in the affidavits on which for reasons already adverted I do not propose to permit the Government to rely. There had been a notice to the Bengal Motor Stores in 1953 and it was a notice in similar terms to the Kashmir Oil Co. that was given in August 1960. I have, therefore, to proceed on the basis that the officers did so without reference to the respondent.

24.24. The statement of the case then proceeds to narrate all the stages through which this application of Anwar Aftab passed pointing out the irregularities and the violation of the rules that happened in bringing it before the Council and getting it passed and also to the very low premium that was fixed. All this, however, is related to and is made to flow from the original instructions which he had given to the Chief Engineer to see to it that Abdul Majid or his minor son should be provided with a site at Bonamsar. If the first part of the case of the Government regarding his direction to the Chief Engineer Mr. P. N. Wanchoo be rejected, the rest of the case against him must also fail. It was, however, submitted by Mr. Khambata that the respondent was aware that his brother and nephew were the parties to whom the land was to be allotted and that they were being allotted the land on a recommendation by the Minister that the applicant should pay a premium of Rs. 2000/- per kanal which he must have known was utterly inadequate and was a gross undervalue. But as I have pointed out in the course of the narration of the facts, the circumstance that the Finance

Department had not been consulted was not brought out in the memorandum and there was nothing to indicate that he knew that this irregularity had happened. It is no doubt possible to say that knowing as he certainly did, that the applicant was his close relation—his brother or his brother's son—and that he was being granted Government land at an undervalue, he could have stopped it and ensured that public interest should not suffer. With a Minister supporting the case and the memorandum stating that the Minister had doubled the premium recommended by the Financial Commissioner, it is too much to expect of the respondent to have intervened so as to deprive his relations of a good bargain. If he had done so, it would have been the most proper thing for him to have done it, but though I must hold that he had not measured up to that high standard, I cannot hold that the charge as made in Allegation 11 and as explained in the statement of the case is made out as against the respondent, though undoubtedly Abdul Majid and his son have benefited by this irregularity. In recording this finding, I am conscious that, failure to intervene and prevent an improper advantage accruing to a near relation, with knowledge, might be held to be tantamount to "connivance". But in the present enquiry, I have adopted a slightly stricter test and I have recorded a finding adverse to the respondent only where I find established the display of some active interest, as distinguished from mere passivity, even if with knowledge.

24.25. Coming next to the allegation regarding the encroachment, I consider that there is no material on the basis of which I could even say that the encroachment was conscious. No doubt under the orders of Government only 2 kanals of land were leased to the applicant Anwar Aftab and it is now found that the plot occupied by him for the purpose of his petrol pump, storage depot etc. extends to 12 marlas and 106 sq. ft. in addition. There is nothing, however, to indicate what exactly was done by the officers of the Nazul Department who were directed to put the lessee in possession of the plot leased to them. It is not clear whether they had a plan or a sketch giving out the measurements in each direction of the land which they took to the spot and indicated on the ground as that which the lessee should occupy. In the absence of such evidence one can only say that the lessee might not be entitled to the excess. That does not establish conscious encroachment, for ought we know the property now in the occupation of the lessee might be that which was pointed out as the property leased by Government. In these circumstances I am unable to uphold the case of the Government as regards this case of a conscious encroachment by the lessee. On this finding it would follow that no question of abuse of power on the part of the respondent being responsible for making this encroachment or retaining the encroached property can arise and, therefore, that portion of the charge also must fall.

25.1. Among the outstanding beauty spots of Srinagar is the Boulevard making an arc around the Dal Lake which itself is a picture of beauty. Quite a bit of property around this Lake on its eastern side is or rather was owned by the Sadr-i-Riyasat Mr. Karan Singh and the members of his family. One of the principal buildings owned by him together with its vast compound and quite an extent of vacant land has been leased to the proprietors of the Oberoi Palace Hotel where

they have been carrying on their business during recent years. Beyond the lands of the Palace Hotel to the north there were other areas belonging to him. The land however, abutting the Boulevard reaching to the Chashmashahi cutting was in the possession of tillers raising vegetables who by reason of the provisions of the Big Landed Estates Abolition Act, 2007 (1950) became proprietors of the said land. Under the Act as it originally stood, the tiller owners were prohibited from alienating their holdings except to the State Government, but by an amendment which came into force in October 1960, a limited right of alienation to the details of which I shall have occasion to refer a little later, was granted to them. Both Bakshi Bashir Ahmed as well as Bakshi Abdul Majid appear to have taken a fancy for this area and made up their minds to acquire large chunks of these lands. The reason for this was not for to seek. Bakshi Bashir Ahmed had obtained by sale in the name of his wife Mrs. Yasmin Bakshi 21 kanals of land from the Maharani Sahiba, wife of Dr. Karan Singh for Rs. 21,000. Though the document of sale was executed on 27th June, 1962, it is common ground that possession was taken over in 1961 and the same is recited in the deed of sale. At the same time 25 kanals of land was gifted by the Maharani to Mrs. Shama Mir, sister of Bakshi Bashir Ahmed, the land being contiguous to the property purchased by him. In this case also though the registered deed of gift was executed on 27th June, 1962, the property was put in possession of the donee in 1961 as recited in the gift deed. How long before the date when possession was handed over the negotiations were complete, we have no evidence. Abdul Majid also had similarly acquired by purchase land from the same vendor. During the years 1961 and 1962 Bakshi Bashir Ahmed and Bakshi Abdul Majid—the latter in the name of his wife as well as in his own name—obtained by purchase from a large number of tiller-owners vast extents of land abutting or nearly abutting the Boulevard. In the case of Bashir Ahmed, the lands purchased were contiguous to those which had been acquired by sale and gift from the Maharani Sahiba with the result that he and his sister together had a compact block almost to the Boulevard. In the case of Abdul Majid who purchased lands adjoining those of Bashir Ahmed and contiguous to his previous purchases, they too were near the Boulevard, though not touching the main road.

25.2. It is the propriety of these purchases by Bashir Ahmed and Abdul Majid that is impugned in Allegation 2 wherein the respondent is charged with having abused his official position as the Prime Minister to coerce these tiller owners to part with their lands to the vendees for an undervalue and in some cases even without consideration. Allegation 3 which is a sequel to Allegation 2 relates to encroachments made by both Bakshi Bashir Ahmed as well as Bakshi Abdul Majid on properties contiguous to those which they purchased in 1961 and 1962 which are the subject-matter of Allegation 2 and also on others which are not contiguous to properties whose purchases are impugned in Allegation 2. It is stated that these encroachments were effected with the knowledge and connivance of the respondent. I shall take up these two allegations 2 and 3 separately and in that order.

25.3. The charge in Allegation 2 is that by the exploitation of

the position, power and influence of the respondent, Bashir Ahmed and Abdul Majid managed to purchase large extents of land situated in the Boulevard, the latter in the names of himself and his wife, the purchases being stated to have been made by the exercise of coercion, undue influence and fraud practised on the vendors. These sales which are thus impugned total 28; of them 7 were purchases by Bashir Ahmed, 4 by Abdul Majid and 17 were taken by Abdul Majid in the name of his wife Maqsooda Begum. There is one other matter to be referred to with reference to this allegation and that is that in these transactions which are said to have been brought about in the manner narrated earlier, Mr. Mir Nasrullah, the son-in-law of Bakshi Ghulam Mohammad, who was then the Deputy Commissioner of Srinagar, played a conspicuous part.

25.4. The allegation as notified reads thus :

“Forty tiller-owners of villages Zethyeer and Asthal, Tehsil Srinagar, as detailed in the appendix, vide pages 1(p) to 1(s) ante were coerced to sell their lands on various dates mentioned in the said appendix, in favour of Bakshi Bashir Ahmed S/o Bakshi Ghulam Mohammad, Bakshi Abdul Majid brother of Bakshi Ghulam Mohammad and Maqsooda Begum the wife of Bakshi Abdul Majid by ignoring rules, adopting irregular methods and exercising undue pressure. Even the total sale amount mentioned in the sale deeds was not paid to the tiller-owners but a comparatively insignificant sum was paid. In these transactions Mir Nasrullah, son-in-law of Bakshi Ghulam Mohammad, who was then posted as Deputy Commissioner, Srinagar, played a conspicuous part. When Bakshi Ghulam Mohammad was approached in a deputation by the tiller-owners to seek remedy against the pressure exercised on them to sell their property against their will and under coercion, he refused to interfere and in fact threatened them. Bakshi Ghulam Mohammad thus abused his official position as Prime Minister and connived at the exploitation of his position by his son, brother and his son-in-law in getting the said sales effected.”

25.5. In view of the contents of this allegation, notices were issued under Rule 6(1)(a) to Bakshi Abdul Majid, Maqsooda Begum, Bakshi Bashir Ahmed as well as to Mr. Mir Nasrullah, in addition to the respondent, to afford them an opportunity to make their representations before arriving at any finding on this allegation, and in response to this notice all of them have filed statements to which reference would be made in due course.

25.6. Before narrating the circumstances attending these several transactions on which reliance has been placed by Government in support of their charge, it is necessary to explain the legal position as regards these lands to appreciate the manner in which the charge is sought to be proved. That the lands in the villages Zethyeer and Asthal in Tehsil Srinagar with which this allegation is concerned were originally held by “big landed proprietors” under whom the 40 vendors who are listed in the Appendix to Schedule II to the notification, is common ground.

25.7. Along with the rest of the country the Jammu & Kashmir State enacted legislation in 1950 abolishing Zamindaris or big landed estates. This was by Act XVII of 2007 (1950) by an enactment entitled The Jammu and Kashmir Big Landed Estates Abolition Act, 2007. This Act was to have effect from the date of its publication in the Government Gazette (vide Section 1 (3) and that date was 16th October, 1950. As learned counsel for the Government laid some stress on the Preamble to indicate the purpose for which the legislation was enacted, I shall extract the same.

“Whereas no lasting improvement in agricultural production and efficiency is possible without the removal of intermediaries between the tiller of the soil and the State ;

“And whereas for the achievement of this objective it is expedient to provide for the abolition of such proprietors as own big landed estates and to transfer the land held by them to the actual tillers ;”

The 40 vendors from whom Abdul Majid and others purchased these lands were tillers who obtained title by reason of this enactment. Land is defined in the Act in Section 2(a) as meaning—

“land which is occupied or has been let for agricultural purposes
.....and includes—

(iii) areas covered by or fields floating over water;”

The significance of this definition will become apparent when I deal with Allegation 3 which relates to encroachments effected on lands pertaining in several cases to some of these tiller owners. Section 4 is the provision under which the full ownership in the land gets vested in the tillers and it reads—

“4.(1) Notwithstanding anything contained in any law for the time being in force, the right of ownership held by a proprietor in land other than land mentioned in sub-section (2) (as according to the village records) shall, subject to the other provisions of this Act, extinguish and cease to vest in him from the date this Act comes into force.”

Sub-section (2) which forms an exception to this divesting provision, saves units of land not exceeding 182 kanals including residential sites, Bedzars (willow plantations) and Safedzars (poplar plantations). The ownership which is divested from the proprietor under Section 4 is transferred to the tiller by Section 5 and that section enacts—

“Ownership rights of such land of a proprietor of which the right of ownership is extinguished under Section 4..... shall be transferred to the tiller of such land to the extent of their actual possession in Kharif 2007.”

Though in carrying out the principle behind the preamble section 5

conferred in terms on tillers the full ownership over such land, this, however, was subject to the provisions contained in section 20 of the Act, under which tillers were debarred from transferring the land of which they had become owners under section 5 or any interest therein. Section 20 as it originally stood read—

“Except as otherwise provided in this Act and except where transfer is made in favour of Government, a local body or a panchayat.....no tiller to whom land shall be transferred under the provisions of section 5 shall transfer such land or any interest therein.”

The tiller, however, was by sub-section (2) given the right to relinquish his rights in favour of the State after obtaining permission therefor from the Revenue Minister.

25.8. This continued to be the state of the law till 1960 when Act XXXI of 1960 was enacted. By this enactment a proviso was added to section 20 which read—

“Provided that the transfer of land or any interest therein for building purposes within the limits of a Municipality, Town Area, a Notified Area, or a Cantonment Area or an area in which a Town Planning Scheme is sanctioned..... or in such villages in the vicinity of a city or town as may be notified by the Government, may be made with the permission in writing of the Revenue Minister.”

This amendment came into force on the 5th October, 1960. It will be seen that by the terms of the proviso as introduced by this amending Act, there were three conditions which had to be fulfilled before a transfer could validly be made. These were :

- (1) That the land must be within a municipal or other local area specified ;
- (2) the transfer must be for building purposes ; in other words, the transferee must bona fide intend to use the purchased property for a building purpose ; and
- (3) there had to be a permission in writing of the Revenue Minister.

Section 21 made provision for cases where a transfer was purported to be effected in contravention of the provisions of the Act and the section rendered such transfers void and under section 24 if a tiller to whom land had been transferred under section 5 transferred his land or part thereof in contravention of the provisions of the Act, the transferees' rights were directed to be extinguished and such land stood escheated to the Government.

25.9. With this background of the statute may now be set out the case of the Government as regards this charge. At the time

when the amending Act XXXI of 1960 came into force, Mr. Mir Nasrullah was the Deputy Commissioner of Srinagar and it is their case that it was through him that the sale transactions which are impugned took place. The 28 sale deeds were executed in batches, on four different dates. The seven sales to Bashir Ahmed were under deeds which were all executed on 4th May, 1961. This was followed by 17 deeds—14 on the 16th August, 1961 and three on the 18th August, 1961—in favour of Maqsooda Begum wife of Abdul Majid, and lastly by four deeds on the 14th January, 1963 in favour of Bakshi Abdul Majid.

25.10. The manner in which these transactions were brought about was, as set out in the statement of the case, briefly as follows. Mr. Nasrullah sent for the Patwari of the village and directed him to prepare a list of the tiller-owners of Asthal and Zethyeer giving their khasra and khata number together with the area held by each. When the identity of the tiller owners and the extent of property held by them, thus became known, a peon in the Deputy Commissioner's office was directed by Mr. Nasrullah to proceed to where the tiller-owners were and take them to Abdul Majid's house. Twentyfour of them were thus taken there in the first week of November 1960 and these persons were induced to affix their thumb impressions on blank stamp papers by a misrepresentation as to the contents of the document to which they were affixing their thumb impressions. The blank stamp papers with the thumb impressions of these tillers were thereafter filled up to read as if they had entered into agreements to sell their lands. Abdul Majid, however, did not for some reason proceed any further with these agreements on stamped papers. This was the first stage.

25.11. The next stage was on the 14th January, 1961 when a petition writer was called by the Deputy Commissioner who directed him to write down applications to the Minister for permission to sell their lands under the proviso introduced by the amendment of 1960 to section 20 of the Act. Except the khasra numbers and the extent of the land that was set out in those applications, the rest were all in identical form and language, and even the name of the intending purchaser was not mentioned, but only a statement was made that the land was being acquired for residential purposes (though the enactment required that the acquisition should be for building purposes). None of the tiller-owners except Mohammad Bhat was present when these applications were drawn up, but in the several applications thumb impressions purporting to be those of these absent persons were got affixed and the applications so prepared were handed over to the Deputy Commissioner Mr. Nasrullah. In the case of Mohd. Bhat it is said that his thumb impression was obtained on a misrepresentation as to the contents of the document. These applications which were 24 in number, were not diarised in the Deputy Commissioner's office, nor was any enquiry made either by him or by his subordinates as regards their conformity with the law, but of these seven out of the 24 which related to the sales to be effected in favour of Bashir Ahmed were forwarded on the 17th January, 1961 to the Revenue Minister with the remarks that the land in question was within municipal limits and that the applicants were tiller-owners who had obtained title to the land under the Big Landed Estates Abolition Act 2007 and that they desired to alienate. It was not even stated

that the land was being acquired for building purposes. That thereafter sale deeds were got executed by these persons who were threatened and coerced into doing so and while in one case no amount was paid at all as recited in the document, in the other six cases some small amounts were paid which were insignificant compared to the price recited in the deed of sale. These seven sale deeds were not presented for registration at the office of the Sub-Registrar, but were registered by a sub-registrar who had been directed to proceed to "the spot" and get them registered.

25.12. The allegation as regards the other set of sale deeds in favour of Maqsooda Begum and Bakshi Abdul Majid is nearly similar and, therefore, it is not necessary to repeat the same. It is only necessary to add that in the case of some of these sale deeds it is said that the vendors were not even present at the execution or at the time of registration, but that thumb impressions purporting to be theirs were affixed to the deeds at the time of the execution or registration.

25.13. I have now narrated in very broad outline the case of the Government as regards how these transactions were brought about and have purposely omitted to mention the part which the respondent is said to have played in these transactions, with reference to which alone the allegation has relevance in this inquiry. To that I shall advert after completing the examination of the Government case.

25.14. Several of the matters which I have set out earlier are to be found stated in affidavits, but as the deponents have not been called, I am not taking any notice of them but shall confine myself merely to the documents which have been placed before the Commission. As already stated, the Amending Act which conferred power upon the tiller-owners to part with their property for particular purposes with the permission of the Revenue Minister came into force on 5th October, 1960.

25.15. Though Mr. Khanna, learned counsel for the Government at first felt some doubt as to whether the Boulevard area by the side of the Dal Lake where the property now in question is situated was or was not within the municipal limits of Srinagar, he has examined the records and satisfied himself that by a notification of January, 1958 the village of Zethyeer including the khasra numbers now in dispute was included within the municipal limits of Srinagar by a notification issued under the provisions of section 5(3), of the Jammu and Kashmir Municipal Act, 2008.

25.16. The property being within the municipal limits, *prima facie* the tiller-owners were competent to sell provided (a) the object of the purchase was for using the land for building purposes; and (b) the permission of the Revenue Minister was obtained. Even before an application was made by the tiller-owners for the grant to them of permission to sell, non-judicial stamps each or each set of a value of Rs. 1.50 were purchased by Abdul Majid, the purpose of the purchase being recited in the register of the stamp vendors as "the execution of agreements in favour of Maqsooda Begum and Bashir Ahmed." There were 24 sets of stamps (the total value of each set amounting to Rs. 150).

The purchases date from 1st November, 1960 to 3rd December, 1960. The proximity of the first date to that on which the amendment to section 20 came into force was the subject of strong comment by learned counsel for the Government. The names of several tiller-owners are set out in the stamp vendor's register as the persons for whom these stamp papers were required. The extracts from the register of the stamp-vendor Janki Nath Trisal from whom these stamps were purchased have been marked as Documents 4 to 7.

25.17. The case of the Government is that on these stamp papers when they were blank the thumb impressions of the several tiller-owners were taken and that Abdul Majid had agreements for the sale of their holdings written or typed out on the papers but that for some reason these stamp papers with agreements engrossed were not put to use subsequently. On the other hand Abdul Majid states that no doubt he originally purchased these stamps for the purpose of getting agreements for sale executed, but that he was advised that agreements were unnecessary as that without the tiller-owners obtaining permission to sell from the Revenue Minister, the agreements would not be effective and, therefore, the idea of obtaining agreements was thereafter dropped. In regard to Documents 4 to 7 the main point upon which the learned counsel for the Government laid stress was the non-production of these stamp papers, which according to Abdul Majid remained blank throughout, and Mr. Khanna submitted that I should uphold the version of the Government and draw an inference adverse to Abdul Majid from their non-production. I feel, however, unable to do so for two reasons: (1) that no evidence has been led and no material placed before me to establish that (a) the tiller-owners affixed their thumb impression to the stamp papers as is asserted in affidavits or (b) that the stamp papers were filled up by writing or typing on them agreements for sale. In the absence of such material I can only proceed on the basis that the stamp papers remained blank and, therefore, their production or non-production could not make any difference. (2) Even more important than the first is the circumstance that the Government did not take out any application to direct Abdul Majid to produce these stamp papers nor even give him notice to produce them. In these circumstances, I can only accept the statement of Abdul Majid that the documents if produced would support his version.

25.18. The idea of taking agreements to sell having been dropped, the next stage was of applications being made to the Revenue Minister for obtaining permission to sell the land included in their holdings. There are several rather unusual features in relation to these applications and their disposal on which learned counsel for the Government laid great stress and on which he relied as constituting irrefutable documentary proof of the allegations found in the statement of the case. I shall now proceed to enumerate them. There were 28 applications--24 of them bear the date 14th January, 1961 and the other four do not bear any date except that in three cases the year 1962 is put in. Taking up the first set of 24, the features on which stress was laid were :

- (1) These applications are all in the same form, written in

the same hand, apparently handed over personally to the Deputy Commissioner Mr. Mir Nasrullah though addressed to the Revenue Minister. They all bear the date 14th January, 1961. After reciting that the applicant or applicants in each case was or were tiller-owners of the khasra numbers set out under the Act of 2007, each application sought permission to sell the land whose khasra number was given for "residential purposes". As already stated, the name of the person to whom the land was intended to be sold was not set out.

(2) Though Mr. Mir Nasrullah received 24 applications on the 14th January, he forwarded only seven of them to the Revenue Minister on 17th January, 1961 with an endorsement which is in rather strange terms and which I shall set out later. Curiously enough, these seven relate to the tiller-owners who owned land contiguous to the property already owned by Bashir Ahmed and who later executed seven sale deeds in his favour. The rest of the 17 applications, though they were received by him on the same day viz. 14th January, 1961, and though no further enquiry was conducted by him or on his direction by his subordinated officers, were forwarded to the Revenue Minister only on 23rd June, 1961. All these related to applications by tiller-owners who executed sale deeds in favour of Maqsooda Begum. Now two questions immediately arise : (1) On what basis were the seven out of 24 applications selected for immediate despatch while the other 17 held up for over five months ; and (2) why were the latter held up when admittedly no enquiry took place in the meantime.

25.19. Mr. Khanna suggested that this differentiation between the two sets of applications was not explicable except on the footing that there were consultations between Mr. Nasrullah and Abdul Majid or Bakshi Bashir Ahmed in the course of which the former informed himself about those applications in which Bakshi Bashir Ahmed was interested and which were pushed through first. Mr. Mir Nasrullah not having appeared at the stage of the arguments, I have not been able to obtain any answer or explanation from him for this feature. I am unable to conceive of any explanation which is consistent with Mr. Mir Nasrullah not being aware of the individual who intended to purchase the property if the applications were granted or of the need on some ground for expedition in regard to one set of applications.

25.20. The next feature relating to Mr. Mir Nasrullah's conduct in this affair on which learned counsel commented and which I consider is justified, was this. Under the proviso to section 20 a tiller-owner could sell the land regarding which he had acquired the right to alienate recently only if the purpose of the purchase was for building. That does pre-suppose an enquiry from the intending purchaser and the ascertainment from him of the purpose of his purchase, for it is only if the purpose is for building would the statutory conditions be satisfied which would enable the tiller-owner to part with his land. It will be remembered that the purchaser not being party to the application by the tiller-owner, what the application would contain is merely at the best the applicant's belief, but what the statute requires is that as a fact the purchaser intends to put the land to a designated use. Besides, on the permission obtained on such an application, without the purchaser's

identity being disclosed, nothing could have prevented the applicant to sell the land to one who never intends to use it for "building purposes".

25.21. The Government in their statement of the case commented upon the very casual way in which Mr. Nasrullah proceeded to deal with these applications suggesting that he had acted improperly. His answer was that he did his duty because what he was required to ascertain under the Act was merely whether the land was within the municipal limits and whether the land was required for building purposes. He did not, however, explain how he acted on the unilateral statement of the tiller-owners as the purpose to which the purchaser intended to use the land. Of course, he did not even say that he had examined the applicants and was satisfied with the correctness of their statements, for he never met them and it is found that the applications are forged. Nor did he examine the proposed vendee, since his name was not disclosed in the application, and so he could not examine him. But the most curious feature of his forwarding note recommending the grant of permission which was accepted by Mr. Mahajan, the then Revenue Minister was that even in his seven typewritten forwarding notes which ran exactly in the same terms (most of them being merely carbon copies of the first copy) despatched on 17th January, 1961, he did not even say that the land was being purchased for building purposes. His note ran—

"Submitted in original to the Secretary to Government Ministry of Revenue, Jammu, with the request that the land in question is situated within the municipal limits. This land was transferred to the applicants under the Big Landed Estates Abolition Act.

"The applicants intend to alienate the said land. It is, therefore, requested that the necessary sanction of the Hon'ble Revenue Minister may kindly be obtained and communicated to this office."

25.22. Learned counsel for the Government submitted that without knowing the identity of the purchaser, the Deputy Commissioner could not state whether the statutory condition was satisfied or not, though I must add that he did not even say the purchase was for building purposes. This conduct of Mr. Mir Nasrullah in dealing with these applications was contrasted with another instance where an application for the same purpose was dealt with by him. On 23rd August, 1962 one Samad Ratal filed an application which was handed directly to the Revenue Minister seeking permission to alienate 10 marlas of land in khasra No. 2196 in Navakadal. In that application he gave the name of the intending buyer with whom he stated he had entered into an agreement for sale. The Revenue Minister forwarded this application in original to the Deputy Commissioner (Mr. Mir Nasrullah) for report on 25th August, 1962. What Mr. Nasrullah then did was not to return it to the Revenue Minister stating that the land was within municipal limits, but he forwarded it to the Tehsildar of Srinagar on 27th August, 1962 for enquiry and report. The Tehsildar sent for and recorded the statement of the applicant on solemn affirmation. He recorded also the statement of the intending vendee who stated on affirmation that he

intended to construct a residential building on the site. The Tehsildar submitted his report to the Deputy Commissioner on 4th September, 1962 stating that there was no objection to the permission being accorded. Mr. Mir Nasrullah sent the application up to the Minister on 8th September, 1962 forwarding along with it the report of the Tehsildar which, he stated, spoke for itself, and thereafter permission was granted. Learned counsel pointed out that the manner in which the Deputy Commissioner acted in the present case was unusual and this conduct was some proof of his complicity in the conspiracy to obtain these lands by undue influence and coercion. Though I do not agree that this is proof or even evidence of Mr. Nasrullah's complicity in any improper conduct towards these tiller-owners, it does indicate that he was aware of who the intended purchaser was even though the same was not stated in the application.

25.23. Though Mr. Nasrullah asserts that he did what the statute required him to do, I am unable to agree with this assertion. As the land could under the proviso to section 20 be sold only for building purposes, it involved an investigation from the intended vendee as to the purpose for which the property was being bought and if the name of the intended buyer was not disclosed in the application, it involved an enquiry from the applicant as to the identity of the intended vendee. Admittedly Mr. Mir Nasrullah did none of these things in respect of any of the applications which he recommended to the Minister for permission being granted. He must be held guilty of culpable neglect of his duties.

25.24. Evidently the Deputy Commissioner realised that the form adopted by him in recommending the first seven applications did not satisfy the requirements of the law and hence when another set of 17 applications was next forwarded by him on the 23rd June, 1961, he adopted a slightly different phraseology and included in his note a statement that the land was intended for "building purposes". But here again though he had stated in his note to the Minister that the land was intended for building purposes, it was admittedly without any investigation, without any enquiry even from the applicant and, of course, without his supposedly even knowing the identity of the intended vendee.

25.25. The question immediately arises whether he could have been guilty of so much irregularity without his being aware of who the purchasers were. I can only answer the question in one way and that is, that he could not and would not have done all this but for his knowledge as to who these intended vendees were.

25.26. Learned counsel Mr. Khanna suggested that the object of separating the seven applications from among the 24 filed on 14th January, 1961 for being forwarded to the Minister on 17th January, 1961 was for the purpose of seeing how those transactions which related to sales to Bashir Ahmed would go through and after the registration of the first seven sale deeds, to forward the other 17 applications which were all done on the same day 23rd June, 1961. I agree that the suggestion looks plausible, but if the Government are right in their case, I do not see what difficulty there was in the applications which pertained to the sale in favour of Maqsooda Begum being forwarded even before the sales in favour of Bashir Ahmed were concluded. For

even if the permission was obtained, the execution of the sale deeds might have been postponed. Anyway, in the absence of more clinching evidence, I do not think I would be justified in recording a finding based merely on suspicion that Mr. Mir Nasrullah forwarded the seven applications in regard to the tiller-owners who were to sell their land to Bashir Ahmed in the first instance with a view to find out whether these resulted in sales before the other applications filed on the same date were forwarded to the Revenue Minister.

25.27. Again, when these applications after having been ordered by the Revenue Minister were returned to the Deputy Commissioner, in the normal course one would expect their being delivered to the applicants, but the register maintained in his office shows that all these were collected by one Manzoor Ahmed, a Kanungo in his office and there is no further despatch of these documents. Therefore, it looks as if the entire bunch of these applications which were ordered by the Revenue Minister, was handed over to a single individual and that individual could only have been Abdul Majid or someone acting on his behalf.

25.28. These are indeed very strange and curious features which throw a considerable amount of suspicion of these applications. This is particularly so in the light of the assertion by Abdul Majid, that when the tiller-owners became aware of the change in the law by which they obtained the right to alienate their holdings, each one of them was desirous and anxious to alienate his land to Abdul Majid and they were pressing upon him to purchase these lands on the ground that they were contiguous to the properties he and Bashir Ahmed already possessed. If he and Bashir Ahmed were to be the purchasers of these properties, one fails to understand why the intending vendees' names were not disclosed in the applications which they filed to the Revenue Minister for permission to sell, unless it be that it was not thought prudent to disclose this information.

25.29. The unusual features attending these applications are not exhausted by those just now mentioned. I have stated that these 24 applications purported to be applications by the 40 tiller-owners whose names are listed in the Appendix to Schedule II to the notification. The number of tiller-owners is in excess of the applications because some of the items of property were jointly owned by more than one person, and these several joint owners filed a single application seeking permission. All these tiller-owners are illiterate and are merely marksmen. It is the case of the Government that except in two cases, none of the other 38 affixed their thumb impressions to the applications in which their thumb impressions purport to have been affixed and that the thumb impressions now found in these several applications are forged ones. The two exceptions are those of Gaffar Dar in the application Document 20 and of Mohd. Bhat in the application Document 38. Besides it is found that in another application—Document 17—though it is stated in its body that there were six applicants who had affixed their thumb impressions, there are only five thumb impressions on it—all forged and the document does not even purport to bear the thumb impression of Gaffar Dar who is stated to be one of the six applicants.

I must add that the several applicants whose thumb impressions are stated to be forged have filed affidavits stating that they had not affixed their thumb impressions to the applications. Both these Gaffar Dar and Mohd. Bhat state in affidavits that they affixed their thumb impressions on blank stamp paper, but as they have not been called as witnesses for oral examination, I shall be proceeding on the footing that they did affix their thumb impressions voluntarily and knowing the nature of the document to which they were affixing it.

25.30 But in regard to the other 38 tiller-owners the matter stands thus. All the 24 applications for permission were forwarded to the Finger Print Expert and his opinion has been obtained on the genuineness of these thumb impressions. Of the 40, one Mohd. Dar who is item No. 1 in the Appendix to Schedule II of the Notification, died very soon after the notification and no thumb impression of his were available for comparison and hence the Expert could not offer any opinion as regards the genuineness of his thumb impression in either Document 11 or Document 17 which are the two applications which support to bear his thumb impressions. As regards the rest of the applicants the 39 of them, their thumb impressions were obtained by the Government and they were sent to the Expert for comparison with their corresponding thumb impression in the several applications. The opinion of the Finger Print Expert has been filed as Document 182 in this allegation and in this he has stated that the thumb impressions of 31 individuals who are items 2-5, 7-9, 11-14, 16-22, 24, 26, 28-31, 33-35 and 37-40 in the Appendix to schedule II to the notification, do not tally with their thumb impressions which were forwarded to him for comparison. In regard to six of them— items 10, 23, 25, 27, 32 and 36—he states that he was unable to express any opinion because the thumb impression in the disputed documents were smudged and, therefore, not capable of being compared. On the basis of this, the Government stated that by and large these applications were really not filed by the tiller-owners but they were got written up at the instance of Abdul Majid with the aid of the Deputy Commissioner and forwarded to the latter purporting to bear the thumb impressions of the several tiller-owners.

25.31. In answer to this Abdul Majid who had admittedly acted as the principal party among the vendees to get these sales effected, has stated in his reply that immediately after section 20 of the Big Landed Estates Abolition Act was amended, the Lamberdar of the village approached him along with some tiller-owners and told him that they wished to sell him the land which lay contiguous to the lands which he had purchased. After inspecting these lands which were offered to him for sale, he considered if they were purchased the plot already owned by him would get a better shape. He, therefore, agreed to purchase the lands at certain prices agreed to, subject to the owners obtaining permission from the Revenue Minister. Meanwhile it was suggested that agreements to sell might be entered into with them and that was why he purchased the stamp papers for the purpose (*vide* Documents 4 to 7), but after this stage, the tiller-owners though sent for through the Lamberdars did not turn up and the information he got was that they were hesitating in the expectation

that they would get a better price to which he was not willing. Meanwhile Abdul Majid was advised that agreements to sell taken from the tiller-owners before they obtained permission would have no meaning. After a few months the Lambardar again approached him with the tiller-owners with papers showing the grant of permission to sell the lands. He then agreed to purchase, but at the prices which he had already mentioned and the tiller-owners agreed. Thus according to him he had no part in obtaining the permission to sell.

25.32. His explanation for the forged thumb impression on the applications seeking permission from the Revenue Minister to sell the land is worth referring to. These applications were all written up by one Gawesh Lal, a petition writer and the applicants affixed their thumb impressions to these applications. Several copies were made, some of which had been kept with the Lambardar who had shown them to Abdul Majid and he was producing three of them. "It becomes clear that the applications on which it is alleged that there are forged thumb impressions must have been substituted for the original applications written by Shri Gawesh Lal petition writer and filed before the Deputy Commissioner..... It appears that his register had also been tampered with to show that no entries were made by him of these applications in his register." And to his statement he has annexed the affidavit of Abdul Khaliq Kolu, the Lambardar who is stated to have brought these tiller-owners with their applications to him and Kolu in his affidavit has stated in paragraph 6 that he went with the tiller-owners to Gawesh Lal, petition writer and "got the applications for grant of permission written by him. The petition writer after writing the petitions entered them in his register and got affixed the thumb impressions of the applicants on the register. At the request of the applicants the petitioner gave them copies of the applications and put their thumb impressions on those copies of the applications. Some copies were kept with me by the zamindars which I am producing." Now he has produced three applications and each one of these three is dated 14th January, 1961 and is on the same form as the 24 applications which had been filed by the Government and on the basis of which the several items of property have been sold under the first 24 sale deeds. It might be mentioned that these three applications purport to be (1) by Ahmed Sheikh son of Qadir Sheikh (item 21 in the Appendix to Schedule II) who executed sale deed in favour of Maqsooda Begum conveying 4 kanals of land by a registered deed dated 16th August, 1961; (2) by Nabir Sheikh son of Noor Sheikh (item 26 in the said list) who by a deed dated 16th August, 1961 conveyed 3 kanals and 5 marlas of land to the same purchaser and (3) by Mohd. Dar son of Wahab (item 27 in the said list) who conveyed 4 kanals 5 marlas of land by a deed dated 16th August, 1961 to Maqsooda Begum. In view of the statement that the applications which were annexed to the Lambardar's affidavit bore the thumb impression of Ahmed Sheikh, Nabir Sheikh and Mohd. Dar and that these were among the copies which were handed over to him by Gawesh Lal, petition writer, I thought it proper to have the thumb impressions on these three documents examined by the Finger Print Expert to ascertain his opinion about the genuineness of these impressions. Accordingly, Mr. Naginder Singh, Expert, Finger Print Bureau, Phillaur, was sent for and he had these three documents compared with the thumb impressions to be found in the papers on which the

investigating officers had taken the impressions of these three individuals on the earlier occasion as also the thumb impressions on the affidavits which each of these three had filed in support of the Government case. After examining and comparing these thumb impressions, the Finger Print Expert submitted a report on 21st November, 1966 in which he stated that the thumb impression in the applications purporting to be by each of the three was different from the thumb impression on documents admittedly bearing their thumb impressions adding "the very type of pattern of the case is different from the said sample thumb impressions and impressions on the affidavit". I have no reason to doubt the correctness of the opinion expressed by the Expert. The position, therefore, boils down to this. The thumb impressions on the 24 applications save those of Gaffar Dar in one of the applications which bears his impression and of Mohd. Bhat, are not really those of the persons whose thumb impressions they purport to be. but are forged.

25.33. This will be the convenient stage at which to refer to the significance of Abdul Majid's defence and the documents produced by him through the Lambardar Kolu who has filed an affidavit on his behalf. It will be seen from the statements of Abdul Majid which I have extracted earlier, that he does not dispute the findings of the Finger Print Expert regarding the thumb impressions on the several applications which have been filed in this allegation as not being of those of whom they purport to be. In fact his defence proceeds on the basis that the applications for permission to sell which are now on the file were later fabrications by the investigating staff of the Government and that they managed to substitute these for the genuine ones which according to him had been filed by the tiller-owners in January, 1961 and June and August, 1962. It would, however, be seen that Abdul Majid takes no responsibility for affirming that the original applications really bore the genuine thumb impressions of the several applicants. His case being that it was Lambardar Kolu who was present at the time when these applications were written up and that it was only after the permission was obtained that the Lambardar approached him and it was at that point of time at which he came on the scene, the responsibility thus being thrown on the Lambardar for establishing that the applications bore that real thumb impressions of the several applicants. We have next the statement of the Lambardar that these applications were all written out in his presence and that the thumb impressions were affixed in his presence and that the petition writer Gawesh Lal entered them in his register. Now there is a further fact which assumes some importance in this connection and this relates to the handing over to him by the petition writer of three applications which according to him bore the genuine thumb impressions of three of the applicants and these are the ones which are annexed to his affidavit. I have already pointed out that the thumb impressions on these three documents are not of those of whom they purport to be. Two questions immediately arise. The first is why were these supernumerary applications drawn up when applications purporting to be by the same individual had already been filed. There are already on the file applications of Ahmed Sheikh (Document 41), Nabir Sheikh (Document 56) and Mohd. Dar (Document 59). What then was the object of having more than one application of these people all written out by Gawesh Lal and particularly

when it is found that the documents produced by Kolu bear obvious traces of having had adhesive stamps originally affixed which were later removed. Such conduct is consistent only with there having been fabrication on a large scale of documents, some being kept in reserve for being used if necessity arose. In these circumstances I consider that Abdul Majid's statement taken along with the affidavit of Lambardar Kolu far from supporting the case of the applications having genuinely emanated from the several tiller-owners really proves that the applications for permission to sell were really fabricated documents in which none except two of the tiller vendees had affixed their thumb impressions. I am also satisfied that Abdul Majid must have known about the manner in which the applications were being got up, for Kolu by himself could have no interest in doing so.

25.34 It is obvious that Abdul Majid after acquainting himself with the opinion of the Expert as to the genuineness of these several thumb impressions coupled with the affidavits which these several tiller-owners have filed in support of their claim that they never affixed their thumb impressions to the several applications, has taken up the position that the thumb impressions on these several applications are forged. He has led no evidence and placed no material in support of the theory that the applications with forged thumb impressions had been substituted in place of applications bearing genuine thumb impressions. In view of this I can only proceed on the basis that the applications which were in the Deputy Commissioner's office and which have been produced from the files, were applications which have been there all the time and on the basis of which the Deputy Commissioner made the recommendation for the grant of permission and the Minister passed the orders on the basis of that recommendation.

25.35 There is one other feature in these applications not merely in the 24, but in the other four which were filed later in 1962 and on the basis of which the four sales in favour of Abdul Majid were executed in January, 1963. The paper upon which all these applications have been written is a non-judicial stamp paper bearing the rubber stamp of the Commissioner of Stamps, Government of Jammu and Kashmir and priced at 10 naya paise. Besides, each of these applications bears a non-judicial adhesive stamp of Rs. 2/-, some of them bearing two one rupee stamps and others single stamps of a denomination of Rs. 2/-. Each one of these stamps has written on it the date of the purchase. In the case of the first 24 applications which were filed on 14th January, 1961 the date on these stamps is 14th January, 1961 and the four applications which were filed in 1962 bear on the stamps the date 20th June, 1962 in the case of one and 19th August, 1962 in the case of the other three—though all these four were forwarded by the Deputy Commissioner with his recommendation on 7th September, 1962. Now in the face of the dates of these stamps it is not easy to appreciate how these applications could be said to have been substituted for other applications which had really been filed on 14th January, 1961. The stamps on these applications bear no indication or trace of having been removed from other sheets of paper and affixed to the paper on which they are now found. If the stamps were affixed to these sheets of paper on 14th January, 1961, that would be clear proof that these were

the applications which were filed on 14th January, 1961 and the theory suggested by Abdul Majid that there has been some substitution for the purposes of this inquiry is frivolous and without substance.

25.36 Before concluding this part of the allegation, reference may be made to the other four applications for premission on the basis of which the four sales were effected in favour of Abdul Majid on 14th January, 1963. In the case of these four applications also the name of the intended purchaser is not disclosed and yet Mr. Mir Nasrullah was able to state that the purchaser intended the property offered for sale for building purposes. The Deputy Commissioner does not even seem to have examined as to whether the applications have been thumb-marked by all the persons who were supposed to apply, because there is one application which does not even purport to bear the thumb impressions of all the applicants. Besides, there is one feature in regard to these four applications which they do not share with the first set of 24. One of the three applications bears the date of the application but the other three which are Documents 83, 86 and 89 do not even specify the date upon which these applications were filed except that they give the year 1962, but even this defect was not required to be rectified and all these four applications although apparently three of them were filed on one date (19th August, 1962 as seen from the date of the stamps) and the fourth as early as 20th June, 1962, were all forwarded to the Revenue Minister on 7th September, 1962 notwithstanding that there was no inquiry and no reason for the delay, nor any reason why these four should be sent up on the same date except that Abdul Majid was really intended to purchase properties by virtue of the permissions obtained. I need hardly repeat that except in the case of Document 83 which bears the thumb impression of Mohd. Bhat, the thumb impressions of the applicants of the other applications were not really those of the persons it purports to bear; in other words all the other applications were forged.

25.37 The circumstance that the tillers were illiterate and had merely affixed their thumb impressions and in one case not even his thumb impression had been affixed, would in the case of any officer who was really interested in performing his duty, have pointed out to him the necessity for an inquiry by himself or by his subordinates as to whether the so-called applicants really intended to part with their property seeing that on public grounds the ownership conferred on them by the Act of 1950 had purposely withheld from them the right of alienation obviously because it was considered that they would not be able to take care of themselves. Though there might be some suspicion as to whether Mr. Mir Nasrullah was not aware of the fact that the thumb impressions in the applications were all forged, I feel I cannot in the absence of better material hold that he had this knowledge. The strange manner, however, in which the Deputy Commissioner acted on these applications appears to me to be explicable only on the basis of his having had knowledge that Abdul Majid and Bashir Ahmed were intending to purchase the property and that he should facilitate their purchase.

25.38 Now, if these applications were really forged except in the case of the impression of Abdul Gaffar in Document 20 and of Mohd. Bhat in Document 83, a question would arise as to whether the sales effected in pursuance of the permissions granted would be valid or whether they would be hit by the provisions of section 21. Again question might arise as to whether when the amended proviso to section 20 permits an alienation of the land of a tiller for a building purpose, it does not require the land acquired from each tiller to be meant for building purposes, or whether the condition imposed by the section would be satisfied if lands purchased from the several tillers are used merely as the compound of an existing building, or of a building constructed on a portion of the land purchased from one of them. If the object of the provision was to relieve the scarcity of building sites in urban areas as shown by its being confined in operation to municipal areas, it would appear to follow that the proper interpretation of the proviso would be to read it as requiring the land acquired from each tiller being used for putting up a building. But these questions are beyond the scope of the inquiry and I do not propose to pursue matter or express my conclusion on them.

25.39. I have already stated some matters in relation to the manner in which these applications were dealt with. Of the 24 applications which were filed on 14th January, 1961, seven which related to the sales to Bashir Ahmed were forwarded by Mr. Mir Nasarullah on 17th January, 1961 and accepting his recommendation the Revenue Minister granted the permission sought in the last week of February, 1961 or within first week of March, 1961.

25.40. There were, as I have already stated, 28 sale deeds and it is the case of the Government that even here not all the thumb impressions on the several sale deeds were genuine and that in some cases at least the thumb impressions were forged.

25.41. Though notices were given to Maqsooda Begum, Abdul Majid and Bashir Ahmed, to produce the originals of the several sale deeds executed in their favour and these notices were given even while the Commission was sitting at Srinagar, the originals were not produced except by Bashir Ahmed who produced the seven sale deeds in his favour. I am, therefore, handicapped by not having before me the originals of the sale deeds bearing the thumb impressions of the several tiller-owners who conveyed their lands to Maqsooda Begum and Abdul Majid. The Government have produced the copies of the sale deeds from the office of the Registrar together with the original documents filed at the time of the registration, namely—

- (1) the permission to sell granted by the Revenue Minister;
- (2) The Jamabandi showing that the vendor executing the sale deed was the owner entered in the revenue records;
- (3) the sketch of the khasra number or numbers which was/ were being conveyed under the deed ;

(4) receipts signed by the vendors in acknowledgement of the receipt of consideration in cases where these were filed; and

(5) copies of sale deeds filed in the Registrar's office.

Several of these documents bear the thumb impressions of the executants except in the case of the sale deed executed by Mohd. Dar and five others to Maqsooda Begum on 18th August, 1961(Document 105). In this case the copy of the sale deed that has been filed does not bear the thumb impressions of the executants. All the several thumb impressions purporting to be by the several tiller-owners in these several documents were forwarded to the Expert for his opinion and I am summarising below in a tabular form the result of his comparison with their admitted thumb impressions. The serial numbering of the tiller-owners is in accordance with the numbers in Appendix to Schedule II to the notification (vide pages 1(P) to 1(S) ante).

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Name of the Tiller Owner

Remarks and Findings

1. Mohd. Dar s/o Fatch Dar

He was dead by the date of the Commission and no comparison of thumb impression made for lack of admitted thumb impressions.

Items 1 to 5, Mohd. Dar, Nabi Dar, Ali Dar, Sultan Dar and Mst. Khati executed two sale deeds one in favour of Bashir Ahmed (Document 99 and another in favour of Maqsooda Begum, by the five along with Gaffar Dar (item 6). While original of Document 99 has been produced, Document 105 has not been produced by Maqsooda Begum in spite of notice to do so. The copy of the sale deed in the office of the Sub-Registrar which has been produced by the Government does not contain the thumb impressions of the executants. Hence in the case of Document 105 executed by the first six items it has not been possible to pronounce upon whether their thumb impressions on the sale deed were genuine or not. In so far as a comparison has been possible of the thumb impressions on the other documents, the results are herein set out.

In respect of sale deed (Document 99) (Application for permission Document 11)
(1)

In respect of Document 105 Application for permission Document 17
(2)

2. Nabi Dar s/o Fatch Dar

Document 11—application for sale does not tally. Permission order, Jamabandi, site plan, receipt and sale deed tally.

Application for sale does not tally. Jamabandi tallies with the impression of Gaffar Dar. Site plan, receipt, no opinion because

smudged. Sale deed not available. Hence no opinion.

3. Ali Dar s/o Khaliq Dar

Application for sale does not tally; permission order, Jamabandi, site plan and receipt and sale deed tally.

Application for permission does not tally; Jamabandi tallies. Site plan tallies with Gaffar Dar. Receipt no opinion because smudged. Sale deed not available.

4. Sultan Dar s/o Khaliq Dar

Application for permission does not tally; permission order, jamabandi, site plan, receipt and sale deed tally.

Application for permission does not tally; jamabandi, site plan and receipt tally. Sale deed not available.

5. Mst. Khati w/o Khaliq Dar

Application for permission does not tally. Permission order, jamabandi, receipt and sale deed tally.

Application for sale does not tally; jamabandi, site plan receipt tally. Sale deed not available.

6. Gaffar Dar s/o Rehman Dar

He has not signed the application (Document 17). The application though purporting to be by six, bears only the thumb impressions of five. The permission order does not bear his thumb impression. Jamabandi, site plan and receipt tally. Sale deeds presumed to have been executed by the 5 and by the six though the application for permission to sell found to forged thumb impressions.

7. Subhan Dar s/o Razak Dar
and
Gaffar Dar s/o Rehman Dar

Gaffar Dar has affixed two thumb impressions. Marks of Gaffar Dar and Subhan Dar on the permission order, jamabandi, site plan and sale deed too indistinct for opinion, but having regard to the thumb impressions on the receipts, it may be taken that the sale deed (Document 108) was executed by him affixing his thumb impression.

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Name of Tiller Owner

Remarks and Finding

8. Khazir Dar s/o Ahmed Dar
9. Ali Dar s/o Ahmed Dar
10. Ghulam Dar s/o Ahmad Dar

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These three executed sale deed (Document III). On the application for permission (Document 23) the thumb imarks of Khazir Dar and Ali Dar do not tally. Ghulam Dar's too indistinct but one may safely proceed on the basis that he too did not affix his thumb impression. In the case of Khazir Dar and Ali Dar permission order, Jamabandi, site plan, receipt and sale deed tally, while in the case of Ghulam Dar though the permission order, jamabandi, site plan do not tally, thumb impression on receipt and sale deed (Document III) tally. Sale deed presumed executed though not the application for permission to sell.

11. Kabir Dar s/o Qadir Dar

Executed sale deed (Document 114) in favour of Bashir Ahmed. Application for sale (Document 26) does not tally. There are thumb impressions on the permission order, jamabandi, site plan, receipt and on the sale deed. Though the Expert has been able to say definitely that the thumb impression on the receipt is that of Kabir Dar, as regards the others he has expressed no opinion in view of the thumb impressions being smudged. In view, however, of the receipt bearing the thumb impression of Kabir Dar, I will proceed on the basis that he has affixed his thumb impression on the other documents as well as the execution by him is made out.

12. Sultan Dar s/o Rahim Dar

He executed sale deed (Document 126) in favour of Bashir Ahmed. His application for sale (Document 38) does not bear this thumb impression. He has affixed his thumb impression to the permission order,

jamabandi, site plan, receipt as well as the sale deed, but in view of the impressions not being clear, the expert has not been able to express any definite opinion whether the thumb impressions on these several documents are his or not. As the executant appeared before the Sub-Registrar and has apparently been identified before him, in view of the presumption of regularity I propose to proceed on the basis that the thumb impressions on these several documents are his and that the sale deed has been properly executed by him and similarly the receipt, though there was application for permission by him.

13. Iqbal Ghasi s/o Samad Ghasi

He is the executant of two sale deeds—one (Document 120 dated 4th May, 1961) in favour of Bashir Ahmed and another (Document 123 dated 16th August, 1961) in favour of Maqsooda Begum. His application for sale in respect of the first sale is Document 32 while the other bears No. 35. In neither case does the thumb impression tally with his admitted thumb impression. In regard to sale deed (Document 120) in favour of Bashir Ahmed, permission order, jamabandi, site plan, receipt and the sale deed bear his thumb impressions. While the Expert is of the opinion that the receipt (Document 121) bears his thumb impressions, he has been unable to express any opinion as regards the other thumb impressions, because they are smudged and not, therefore, fit for comparison. In view, however, of the thumb impression on the receipt which is found to be genuine by the Expert, I consider the execution of the sale deed (Document 120) as established. In the case of the other sale deed (Document 123) there is no thumb impression on the permission order, but jamabandi, site plan receipt and the sale deed all bear his thumb impression. Though the Expert has been able to identify the thumb impression on the sale deed as that of Iqbal Ghasi, he felt unable to express any opinion with regard to the others because of their indistinctness. Since the sale deed bear his thumb impression, I can only proceed on the basis that the execution is proved, though there was no application for permission by him.

14. Ahemd Dar s/o Mohd. Dar

He has executed sale deed (Document 117) in favour of Bakshi Bashir Ahmed. His application for permission to sell (Document 29) contains his thumb impression, but in the opinion of the Expert it is not genuine. He has affixed his thumb impressions to the permission order, jamabandi, site plan, receipt and the sale deed. While the Expert is of opinion that the thumb impressions on the jamabandi and the sale deed being clear they are those of Ahmed Dar, he felt unable to express a definite opinion as regards the three others because of their indistinctness. The execution of the document is, therefore, to be taken as proved, though he made no application for permission to sell.

15. Mohd. Bhat s/o Amir Bhat

His application for permission to sell is Document 83 and the deed executed in pursuance of the permission obtained is Document 174. He has affixed his thumb impressions to the jamabandi, site plan and the sale deed as well as to the blank certificate of mutation. This is one of the two cases out of the 40 tiller-owners where it is found that the thumb impression on an application for permission is found to be genuine. There is no independent receipt attached to the sale deed and hence no question of thumb impression on it. While the Expert is of the opinion that the thumb impression on the jamabandi filed with the sale deed does not tally with Mohd. Bhat's admitted thumb impressions he has expressed inability to state any opinion as regards the thumb impressions on the site plan and the sale deed as these are indistinct. But he is clear that on the certificate for mutation which was

definite opinion is expressed about the thumb impression on the sale deed and in view of the identification of the thumb impression on the certificate for mutation, it must be held that Mohd. Bhat has executed the sale deed (Document 174) in favour of Abdul Majid.

16. Wali Patnoo s/o Rasool Patnoo

He has executed a sale deed (Document 180) dated 14th January, 1963 in favour of Abdul Majid. His application for permission to sell is dated 20th June, 1962 and is Document 92. The Finger Print Expert is of opinion that this signature does tally with his admitted thumb impression. He has affixed these thumb impressions on the jamabandi, site plan and the sale deed. There was no independent receipt executed by him and hence no question of any thumb impression on it. There are thumb impressions on the jamabandi, site plan and the sale deed which do tally with his admitted thumb impression. The site plan as well as the sale deed, however, contain impressions of more than one thumb which the Expert considers are of a different individual, but in any event, since Wali Patnoo's thumb impressions are found on the sale deed as well as on the accompanying documents, there is no doubt that he has executed the sale.

17. Aziz Mir s/o wadir Mir

He figures as executant of two documents (1) when he conveyed as sole owner 3 kanals 8 marlas of land to Bakshi Abdul Majid by deed dated 14th January, 1963 (Document 176). His application for sale does not bear the date except the year 1962 and is Document 86. In the opinion of the Finger print Expert the thumb impression on Document 86 tallies with his admitted thumb impression. Along with the sale deed he has filed the order granting him permission to sell, jamabandi

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and the site plan as also a blank certificate from for effecting mutation—the last one being dated 23rd July, 1963. In the opinion of the Expert while the thumb impression on the permission order does not tally with the comparable documents, he finds that the thumb impression on the sale deed and on the blank certificate for mutation do tally, while owing to the indistinctness of the marks he is unable to offer any opinion as regardst he genuineness of the thumb marks on the jamabandi and the site plan. In view, however, of the opinion regarding the thumb mark on the sale deed and the blank certificate, as also on the application for sale, it must be held that the application for permission to sell was filed by him and that he executed the sale deed in accordance with law.

Aziz Mir also figures as one of the two vendors along with item No. 40 Mehda Mir s/o Qadir. These two executed on 16th August, 1961 a conveyance in respect of 3 kanals 18 marlas in favour of Maqsooda Begum. The application for permission to sell in this case is Document 74. In the opinion of the Expert the application for sale which purports to bear Aziz Mir's thumb impression is not really his, but the thumb impressions on the jamabandi and the sale deed (Document 164) are his, while the impressions on the site plan and the receipt are too indistinct to express an opinion. The result is that though Aziz Mir has not filed the application he has executed the sale deed in confromity with the law.

18. Rehman Khan s/o Khaliq Khan

He executed a sale deed (Document 170) on 14th January, 1963 in favour of Abdul Majid. His application for permission to sell is Document 89 and it purports to bear his thumb impression. Along with the sale deed the documents which bear his thumb impression are the jamabandi and the site plan. In the opinion of the Expert while the thumb impression on the application for sale is not his, the thumb impressions on the jamabandi and on the sale deed are his, while he is unable to express an opinion as regards that on the site plan. The result is that though he had not applied for permission, he has been a party to the sale deed.

19. Ramzan Khan s/o Wahab Khan

20. Ismail s/o Samad Dar

} They are the joint executants of sale deed (Document 102) by which they conveyed 4 kanals and 1 marla in favour of Maqsooda Begum by deed dated 16th August, 1961. Their application for permission to sell is Document 14 which purports to bear their thumb impressions and along with the sale deed their thumb impressions are to be found in the jamabandi, site plan and the sale deed. In the opinion of the Expert while the thumb impressions of both of them on the jamabandi, site plan and the sale deed tally, and he is also clear that the thumb impressions of Ismail Dar on the receipt is his, he felt unable to express any opinion because the impression was smudged, whether the thumb impression of Ramzan Khan was his or not. His is, therefore, a case where there was no application for permission by the two co-owners, but they joined in executing the sale deed in favour of Maqsooda Begum.

21. Ahmed Sheikh s/o Qadir Sheikh

Ahmed Sheikh executed a sale deed (Document 129) on 16th August, 1961 in favour of Maqsooda Begum conveying 4 kanals of land. The application for permission to sell is Document 41 dated

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14th January, 1961 and the opinion of the Expert is that the thumb impression on this document is not that of Ahmed Sheikh. (It will be recalled that another application in the same terms as Document in the hand of the same petition writer Gawesh Lal has been produced by Kolu Lambardar and the thumb impression of Ahmed Sheikh which it contains has been examined by the Expert and found to be also a forgery). In the documents filed along with the sale deed, the thumb impressions of Ahmed Sheikh are to be found in the jamabandi, site plan and the receipt. In the opinion of the Expert the impressions on the jamabandi and on the receipt are clearly his, but owing to the indistinctness of the impressions, he was unable to express any opinion as to whether the impressions on the other two documents were his or not. In view of the thumb impression on the receipt as well as in the jamabandi which are identified and in the absence of any express finding as regards the thumb impression on the sale deed, it has to be held that Ahmed Sheikh did execute the sale deed and did sign the receipt, though he made no application for permission to sell.

22. Khuda Bhat s/o Ahmed Bhat

He executed the sale deed (Document 136) on 16th August, 1961 conveying 8 kanals 3 marlas in favour of Maqsooda Begum. The application for permission to sell is Document 44 and the opinion of the Expert is that the thumb impression in it purporting to be that of Khuda Bhat is not his. Along with the sale deed among the documents filed, the jamabandi, the site plan and the receipt contain his thumb

impressions. In the opinion of the Expert though owing to the indistinctness of the impression he was unable to offer any opinion as regards the thumb mark on the sale deed, he considered that the thumb impressions on the jamabandi, site plan and the receipt were all those of Khuda Bhat. The execution of the documents is, therefore, clearly proved.

23. Ahad Dar s/o Ramzan Dar
24. Qadir Dar s/o Ramzan Dar

} These two jointly executed the deed of sale (Document 133) in favour of Maqsooda Begum on 16th August, 1961. The application for permission to sell is Document 47 which is purported to be affixed jointly by the two and the opinion of the Fingerprint Expert is that neither of these two thumb impressions are those of the applicants. Among the documents filed by them along with the sale deed which bear the thumb impressions are jamabandi, site plan and the receipt. The Expert is of the opinion that the thumb impressions purporting to be of Qadir Dar on these three documents and the sale deed are those of Qadir Dar while in regard to the impressions purporting to be of Ahad Dar though he considers that those on the sale deed and on the jamabandi are his, he felt unable to express any opinion as regards the impression on the site plan and the receipt, because of their indistinctness. It is clear that though they had not applied for permission to sell, they had executed the sale deed and had got it registered.

Qadir Dar has besides executed as sole owner another sale in favour of Maqsooda Begum conveying to her 1 kanal 6 marlas of land under sale deed (Document 155). The application for permission to sell in respect of this property conveyed under this transaction is Document 65, but owing to the indistinctness of the impression, the Expert

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is unable to say whether it tallies with the admitted impression or not. However, in view of the other transaction not having originated from him and the defence of Abdul Majid to which a reference has been made, it appears that the application was not by him at all. Along with the sale deed the documents bearing his thumb impressions are the jamabandi, site plan and the receipt. The Expert was of the opinion that the thumb impression on the jamabandi, receipt and the sale deed were those of Qadir Dar, while he was unable to express his opinion as regards that on the site plan. As the receipt and the sale deed do bear his thumb impression, it is clear that the document has been executed by Qadir Dar and got registered by him.

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25. Rehman Dar s/o Karim Dar

This tiller owner executed the sale deed (Document 39) conveying 4 kanals 4 marlas of land in favour of Maqsooda Begum by deed dated 16th August, 1961. The application for permission to sell (Document 50) purports to bear his thumb impression, but owing to the indistinctness of the mark, the expert is unable to say whether it was his or not. But in the affidavit which the vendor has filed he states that he filed no application for permission to sell and having regard to the statement of Abdul Majid, one can safely proceed on the basis that except in the case of those two or three where the thumb impressions do tally, in the case of the others the thumb impressions are all forged, as is evident from the additional documents produced by Kolu in

support of Abdul Majid.

Among the documents filed along with the sale deed those bearing the thumb impression of the executant are the jamabandi, the site plan and the receipt. While the expert was able to identify the impressions on the jamabandi and on the sale deed as those of Rehman Dar, because of the indistinctness of the marks he was unable to offer any opinion as regards the thumb marks on the other two documents, but in view of the thumb mark on the sale deed being identified, it ought to be held that Rehman Dar did execute the sale deed (Document 139).

26. Nabir Sheikh s/o Noor² Sheikh

Nabir Sheikh executed the sale deed (Document 146) in favour of Maqsooda Begum on 16th August, 1961. The application for permission to sell on the basis of which the Revenue Minister made the order enabling the sale to be effected is Document 56. The Expert is of opinion that the thumb impression on this application is not that of Nabir Sheikh. (I have only to add that in support of his defence Abdul Majid filed the affidavit of Kolu who produced another application purporting to be by Nabir Sheikh written by the same petition writer Gawesh Lal which also purported to bear the thumb impression of the applicant Nabir Sheikh. This, as already stated, has been found not to be that of Nabir Sheikh and, therefore, a forgery). The documents filed along with the deed of sale at the time of the registration on which the thumb impressions of Nabir Sheikh are to be found are the order granting permission, jamabandi, site plan and the receipt. While the Expert states in his report that the thumb impressions on the permission granted to him, on the jamabandi, on the back of the receipt (there is one on the front side also) and on the sale deed are not the thumb impressions of Nabir Sheikh. He states that two other impressions—one on the site plan and one on the receipt—are not clear enough for comparison. Nabir Sheikh states in his affidavits that he executed no sale deed and never went to the Registrar's office to have the document registered. As the original of this document which might bear the registration endorsement together with the identifying witnesses has not been produced

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27. Mohd. Dar s/o Wahab Dar

notwithstanding notice to produce, I am not in a position to say that the story put forward by Nabir Sheikh is true or not. In any event, that would be a matter for the courts to decide.

This tiller-owner executed the sale deed (Document 149) in favour of Maqsooda Begum by a deed dated 16th August, 1961. The application for permission to sell to the Revenue Minister is Document 59. In view of the very indistinct thumb mark on the document, the Expert was unable to form a clear opinion as to whether the thumb impression which this application bore was or was not that of Mohd. Dar. In view, however, of another application purporting to be by Mohd. Dar bearing the same date as Document 59 dated 14th January, 1961—has been filed by Abdul Majid along with the affidavit of Lam-bardar Kolu and as the thumb impression on this document has been found to be a forgery by comparison with the admitted document, I feel justified in holding that the thumb impression on Document 59 is not also that of Mohd. Dar. At the time of the registration of the deed the documents filed along with the sale deed which bore the, thumb impression of Mohd. Dar were jamabandi, site plan and the receipt. The Expert is of opinion that the thumb impressions on all these three as well as in the sale deed are all those of Mohd. Dar. Thus, though there was no application by Mohd. Dar seeking permission to sell the land, he did execute the conveyance (Document 149) in favour of Maqsooda Begum.

28. Salam Bughal s/o Rasool

Bughal executed the sale deed (Document 161) on 16th August, 1961 conveying 2 kanals 1 marla of land in favour of Maqsooda Begum. The application for sale (Document 71) which purports to bear his

thumb impression has been examined by the Finger print Expert who has expressed the opinion that the impression there is not that of the applicant. With the sale deed the documents filed at the time of the registration in which the thumb impressions are to be found are the jamabandi, site plan and the receipt. Except the impression on the site plan as regards which the Expert is unable to say anything definite because of its indistinctness, he has recorded his opinion that the marks on the jamabandi, receipt and the sale deed were those of Salam Bughal. Thus, in this case also though there was no application for permission to sell by the tiller owner, the execution of the sale deed by him is proved.

- 29. Wali Dar s/o Salam Dar
- 30. Ghulam Dar s/o Salam Dar
- 31. Subhan Dar s/o Salam Dar

A sale deed (Document 171) dated 16th August, 1961 in favour of Maqsooda Bdegum purports to be executed by these three brothers jointly who are co-owners of 4 kanals 7 marlas of land comprised in Field Nos. 321 and Part 219. The application for permission for sale (Document 80) dated 14th January, 1961 purports to be by these three, but according to the Fingerprint Expert none of the thumb impressions tallies with the corresponding admitted impressions, with the result that according to him each one of these thumb impression is forged. At the time of the registration of the sale deed the documents filed by them on which their thumb impressions are to be found are the jamabandi, site plan and the receipt. According to the expert while the thumb impression of Wali Dar, the eldest, tallies with the admitted impressions in these three documents as well as in the sale deed, owing to the indistinctness of the impressions which purport to be by Ghulam Dar, he was unable to compare them with admitted documents and express his opinion. In the case of Subhan Dar, while the jamabandi, the site plan and the receipt bear the marks of Subhan Dar and they tally with those in admitted documents, there was no thumb impression in a copy of the sale deed obtained from the Registrar's office with the result that there was no question of the Expert identifying the thumb impression. Document 171 is,

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as stated earlier, the copy of the sale deed obtained from the Registrar's office and it bears only two thumb impressions. It is possible that the original sale deed did contain the thumb impression of Subhan Dar also, but owing to the non-production of this original by Maqsooda Begum, I am unable to say whether it does or not. However, as it looks to me to be very unlikely, if not impossible, that one of the vendors did not affix his thumb impression to the documents in token of execution particularly as he has affixed these thumb impressions to the jama-bandi, site plan and the receipt I can only proceed on the presumption that Subhan Dar also affixed his thumb impression to the sale deed and this presumption I am able to draw more easily because even according to Subhan Dar who has filed an affidavit he did affix his thumb impression, but according to him on a blank stamped paper. The result is that though no application had been filed by these three co-owners seeking permission to sell the land, they did execute a sale deed in favour of Maqsooda Begum.

32. Ahmad Dar s/o Subhan Dar

He was sole owner of 1 kanal 13 marlas of land which was sold by a deed dated 16th August, 1961 (Document 167) to Maqsooda Begum. The application for permission to sell is Document 77. The thumb impression purporting to be by Ahmed Dar could not be compared with his admitted impressions because of its indistinctness, but having regard to the statement of Abdul Majid and the documents appended to the affidavit of Kolu, I have no doubt that this application for sale did not bear the thumb impression of Ahmed Dar. I might add that in the affidavit which he has filed he speaks only of the coercion practised on him to execute the sale deed and to his affixing his thumb impression on a blank stamped paper which according to the

deponent was the first occasion on which he was compelled to appear before Abdul Majid. Along with the sale deed thumb impression on which has been identified as his by the Expert, the jamabandi, the site plan and the receipt filed along with the sale deed contain his thumb impressions. But as these are smudged, the Expert was unable to express any opinion as regards them. But in view of the thumb mark which has been identified on the sale deed, it appears to me that the thumb marks on the other documents also should have been those of Ahmad Dar. In this case also, therefore, though Ahmad Dar did not file an application seeking permission to sell, he did execute the sale deed (Document 167).

33. **Wali Dar son-in-law of
Rahim Dar**

Wali Dar executed sale deed (Document 158) along with Gani Dar son of Rahim Dar (item 34) and Mst. Khati wife of Shaban Dar (item 35) in favour of Maqsooda Begum on 18th August, 1961 conveying 4 kanals 4 marlas of land in Field No. 291. The application for permission to sell this land purporting to be by him has been examined by the Fingerprint Expert who found that it did not tally with the admitted impressions. Not merely the sale deed, but the jamabandi, the site plan and the receipt which were filed along with it at the time of the registration bore the thumb impression of Wali Dar and according to the Fingerprint Expert the impressions on all these four documents are those of Wali Dar. The result is that though he did not apply for permission to sell, he has executed the sale deed in favour of Maqsooda Begum.

In the case of Gani Dar and Mst. Khati, the opinion of the Expert is similar, namely that their thumb impressions on Document 68—application for permission—does not tally, but that it tallies in regard to the other documents. The result is that I hold that though no application for permission was filed by these three executants, to sale deed (Document 158) they did join in the execution of the sale deed.

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34. Gani Dar s/o Rahim Dar }
35. Mst. Khati w/o Shaban Dar }

These two persons were co-owners of a part of Field No. 305 of an extent of 1 kanal 6 marlas and they executed in favour of Maqsooda Begum sale deed (Document 142) on 18th August, 1961. So far as the application for permission to sell which is Document 53 is concerned, it purports to bear the thumb impressions of both of them, but the Expert is clearly of the opinion that they are not theirs. So far as the sale deed is concerned, while he found that the thumb impression of Mst. Khati tallies with her admitted impression, he was unable to offer any opinion on the thumb impression of Gani Dar in the sale deed. The jamabandi, site plan and the receipt filed along with the sale deed bore their thumb impressions. So far as the thumb impressions on the receipt are concerned, the Expert is of the opinion that they were those of Gani Dar and Mst. Khati. He was also able to identify the thumb impression of Mst. Khati on the jamabandi, but in regard to others, owing to the indistinctness of the marks he felt unable to express any definite opinion. In view, however, of the thumb impressions on the jamabandi, receipt and the sale deed of Mst. Khati and on the receipt of Gani Dar, I am of opinion that the execution of the document by the two executants is proved.

36. Ahmed Baba s/o Ahad Baba }
37. Rasool Baba s/o Ahad Baba }
38. Mohd. Daga s/o Rasool Daga }
39. Abdul Karim s/o Aziz Jafri }

These four individuals were co-owners of 5 kanals 12 marlas of land in parts of Fields 148, 150 and 340. They executed on 16th August, 1961 a deed in favour of Maqsooda Begum (Document 152). The application for permission to sell is Document 62 dated 14th January, 1961 and it purports to bear the thumb impressions of all these four individuals. While the impression purporting to be that of Ahmed Baba was indistinct and which rendered it not possible for the Expert to say definitely whether it was his or not, the three other impressions were distinct and the Expert stated that they did not tally with the

admitted thumb impressions of these three individuals. I have no doubt that Ahmed Baba also could not have affixed the thumb impression for the reasons already stated and that there was really no application for sale by these people and that Document 62 is a forgery in the sense that it does not bear the thumb impression of the persons of whom it purports to bear.

Coming next to the execution of the sale deed and to the thumb impression on the documents filed along with it, the position is as follows. Along with the sale deed among the documents filed, jamabandi, site plan and the receipt bore each four thumb impressions. In the opinion of the Expert the thumb impression purporting to be of Ahmed Baba on the site plan, receipt and the sale deed are his. The impression on the jamabandi was indistinct and so he was unable to express any definite opinion. In other words, Ahmed Baba had executed the sale deed. Rasool Baba's signatures are similarly found in the jamabandi, site plan, receipt and the sale deed. According to the Expert the thumb impressions on the jamabandi, site plan and the receipt purporting to be that of Rasool Baba do not tally with his admitted impressions. The Expert has stated that the thumb impression on the sale deed which for the identification he has numbered as 18, is that of Ahmed Baba who has also affixed his thumb impression to the deed as an executant. In other words, the sale deed bears the thumb impression of three people but one of the executants has put his thumb mark purporting to be that of his brother. In the affidavit that he has filed Rasool Baba states that he executed no sale deed, while his co-owners were according to him coerced into doing it. The circumstance that the thumb impressions on the jamabandi, site plan, receipt and the sale deed bore thumb impressions which are not his, appears to me to probablise, if not to establish, his version that he did not join in the sale deed. As the original sale deed has not been produced, I am not able to find out who the witness was who identified him before the Sub-Registrar and also whether he affixed any thumb impressions in the presence of the Sub-Registrar. In view of the non-production of the original of the sale

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deed by Maqsooda Begum and on the evidence now before me, I can only hold that Rasool Baba did not join in the sale deed (Document 152) which purports to be executed also by him.

As regards the other two executants Mohd. Daga and Abdul Karim, the thumb impressions on the jamabandi, site plan and the receipt as well as in the sale deed are clearly those of Abdul Karim. The Expert has expressed the opinion that the thumb impression on the site plan, receipt and the sale deed of Mohd. Daga are also his but he is unable to say whether the thumb impression on the jamabandi of Mohd. Daga is his or not owing to the impression not being clear, with the result that the sale deed (Document 152) is proved to have been executed by three of the four executants Ahmed Baba, Mohd. Daga and Abdul Karim.

40. Mehda Mir s/o Qadir

This is the last of the tiller owners listed in Appendix to Schedule II of the Notification. He along with his brother Aziz Mir executed the deed (Document 164) in favour of Maqsooda Begum of 3 kanals 18 marlas, the date of the sale deed being 16th August, 1961. The application for permission to sell is Document 74 and according to the Expert the thumb impression on it purporting to be that of Mehda was not his. Coming to the sale deed, the jamabandi, site plan and the receipt which were filed along with it, all contain his thumb impression and the Expert is of opinion that the thumb impression in the sale deed and in these three after documents were all his. So, though Mehda Mir did not file an application seeking permission to sell, he did execute the sale deed.

25.42 I have set out in some detail the result of the examination by the Expert of the several thumb impressions on the sale deeds and the documents accompanying them in view of the strenuous argument addressed to me in great detail by learned counsel for the Government on this allegation. The above analysis would show that except in the case of Gaffar Dar and Mohd Bhat, the thumb impressions on all the other applications seeking permission to sell were forged. In the case of the sale deeds it has been established that excepting Rasool Baba son of Ahad Baba (Document 152) all the others have executed the several sale deeds in favour of Bakshi Bashir Ahmed, Maqsooda Begum or Abdul Majid as the case may be.

25.43 The case of the Government which they sought to sustain on the strength of the affidavits of the several tiller-owners which they filed was briefly as follows. None of the tiller owners was willing to part with his land because it was their sole source of livelihood. Each one of them was coerced by threats and intimidation and in some cases even physical violence to proceed to the residence of Abdul Majid and affix his thumb impression by a Peon of the Deputy Commissioner's office or by the Patwari or by others. There they affixed their thumb impressions to blank stamped papers and they were paid some small amounts. The amounts which it is stated were paid to each of the vendors are set out in the Appendix to Schedule II of the Notification and a perusal of this would show that these were an insignificant part of the considerations recited in the sale deeds. In the case of all except four of the transactions which were in favour of Abdul Majid, we find there were receipts bearing the thumb impressions of the executants acknowledging the receipt of the consideration which is for the same amount as that which is recited in the respective sale deeds. The case of the Government as set out in the affidavits of the several tiller-owners is that the latter put their thumb impressions to these receipts while the papers were still blank, the typewritten matter in it being introduced later. It is also stated that even the consideration recited in the several sale deeds is far below the actual market value of these lands.

25.44 In view of my ruling that I would not take any notice of allegations or statements in affidavits which were not borne out by documents unless the deponents were called as witnesses to be examined, and as no oral evidence was led as regards these allegations, I must hold that these allegations are not proved by the statements in the affidavits.

25.45 I have next to consider whether there is any other evidence or material on which Government could rely in support of their case.

25.46 The first circumstance on which reliance was placed in support of the submission that the admitted or proved

facts establish the case of coercion and undue influence, was that based upon Documents 4 to 7 which disclose the purchase of 24 sets of stamp papers of the value of Rs. 1.50 admittedly for the purpose of engrossing agreements for sale. It was pointed out that out of the 24 only 17 had executed the sale deeds subsequently and that seven did not figure as vendors at all. On the strength of this it was urged that the failure of the seven to execute sale deeds was some proof (a) that they were willing to execute the agreements in the first instance and (b) that even though by coercion or by misrepresentation their thumb impressions had been taken in the Documents on which agreements for sale were subsequently written, they had persisted in their refusal and resisted the coercion practised upon them at subsequent stages and that this was the reason why no sale deeds were taken from them. I am unable to agree that this is the proper or the only inference to be drawn from the seven sets of tiller vendors not being parties to any deeds of sale conveying the lands that they owned. Their non-participation might on the other hand have been due to their disinclination to complete the transactions to which they had originally agreed. If this were the correct explanation, their non-participation far from proving the exercise of undue influence or coercion on the other 17 would be some evidence that those who joined and executed sale deeds did so voluntarily. In any event, in the absence of the oral evidence of these tiller owners in the witness box and their evidence subjected to cross-examination being available and supporting the case of coercion, I feel unable to accept the Government case that coercion was practised on the tiller-owners for the reason (a) that there was an infructuous attempt to obtain the agreements for sale from the 24 tiller owners or (b) that seven of these 24 did not subsequently execute deeds of sale. The utmost that could be said as flowing from the purchase of stamps for executing the 24 agreements for sale which subsequently did not come through, would be that the story of Abdul Majid that he was pressed by the several tiller-owners to purchase their property and that persuasion was needed to induce him to agree cannot be accepted, but that on the other hand immediately the Act was amended so as to confer power upon the tiller-owners to sell their land, he set about the task of trying to obtain sale deeds from the owners of the properties which were contiguous to those which were already his or his nephew's. But this by itself cannot, as would be evident, carry the Government far enough.

25.47 The next circumstance was based upon the nature of the applications for permission to sell, most of which have been proved to be forgeries. Now the case of Abdul Majid was that these applications were got prepared by Lambardar Kolu with the help of petition writer Gawash Lal and that he came on the scene only after the applications resulted in orders granting permission to sell when these orders were brought to him by the Lambardar along with the tiller-owners. I might at once state that I do not believe the story and

that it is not possible to conceive of these applications having been prepared except at the instance of Abdul Majid. The story of Lambardar Kolu about the tiller-owners approaching him and his getting these applications written up and their affixing their thumb impressions in his presence has to be rejected in view of the thumb impressions being forged. The only alternative is that the applications were prepared and got written up by Gawash Law in the absence of the tiller-owners. The only person who was interested in the applications being granted was Abdul Majid acting for himself and for his nephew Bashir Ahmed. Abdul Majid had already evinced his desire to purchase these properties by the purchase of stamp papers vide Documents 4, 7 and in the circumstances it stands to reason that it was for him and it was at his instance that these several applications were prepared. I have already pointed out that when the orders granting permission were received in the Deputy Commissioner's office, they were all taken in a bunch by one of the clerks and there is no entry of their having been delivered to the several applicants. It is, therefore, likely that these orders should have been delivered either to Lambardar Kolu who was admittedly acting as the emissary and representative of Abdul Majid or to Abdul Majid himself. Up to this point though the manner in which the permission was obtained including the part played by Mr. Mir Nasrullah in making this possible, is far from creditable, but the question still remains whether they support the inference or can form the basis for drawing an inference that coercion was practised in order to obtain the sale deeds. Learned counsel for the Government submitted that the forging of the thumb impressions to the several applications would prove that the several tiller-owners whose impressions were forged were unwilling to affix their thumb impressions to the applications and that it was because of this unwillingness that resort was had to forge them. Though the argument is somewhat plausible, I am unable to accept it for it is not supported by the statement of these tiller-owners in their affidavits. They refer to coercion, undue influence and even physical violence practised at the stage of the sale deeds, but though two of them Gaffar Dar and Mohd. Bhat refer to their affixing their thumb impressions on blank papers on a misrepresentation as to the contents of the documents which would be filled up, none of them speak of any coercion having been practised upon them to get them to affix their thumb impressions to applications which they resisted successfully. There is another angle from which the circumstances of the applications having forged thumb impressions could be viewed. If the tiller-owners did not put their thumb impressions to the several applications, as is the case of the Government, it would follow that they did not really know that Abdul Majid had managed to secure the permission to sell without reference to them. It is consistent with fraud on the part of Abdul Majid or those acting for him, and consistent also with the tiller-owners not being aware of the need for their obtaining permission to sell, but it is wholly inconsistent with any coercion or undue influence having been practised on the

tiller vendors.

25.48 Pausing here, there is one matter to which it is necessary to refer which was relied on as documentary proof of coercion and intimidation.

25.49 In the affidavits of the several tiller-owners they had stated that one Sona Khan a peon in the Deputy Commissioners office came to them and dragged them to Abdul Majid and learned counsel sought corroboration for these statements from the fact that Sona Khan's attendance register (Document 8) showed him to be on leave on dates relevant to the obtaining of the sale deeds and he did not attend office on the days on which the tiller-owners stated that he had been with them and that he had been granted leave on those days. But I am unable to hold this as any corroboration. Of course, if the tiller-owners had been examined as witnesses and they had spoken to the facts stated in these affidavits and their statements were not shaken in cross-examination, the fact that Sona Khan was absent from his office would have become relevant and the attendance register showing his absence from his office would have corroborated that story, but as no foundation has been laid for holding that Sona Khan had gone to them, I am unable to treat Document 8 as having any bearing as establishing the story put forward by the tiller-owners.

25.50 If the circumstance that the applications were forged be put aside, there was really no documentary evidence on which reliance could be placed for supporting a case of coercion. Mr. Khanna, however, submitted that the circumstance that all the sale deeds were presented for registration not at the office of the Sub-Registrar but that the Sub-Registrar was called to the residence of Abdul Majid or for registration on the spot, was indicative of some pressure being brought to bear upon the tiller-owners. I am unable to agree. Whether the reasons which were suggested for requiring the Sub-Registrar to attend at a private residence for the presentation of a document were justified by the rules relevant to the subject, is not a matter which I am called upon to consider. The Sub-Registrar apparently thought that he ought to attend in response to the request of Bashir Ahmed or Abdul Majid. I am unable to draw any inference as to the willingness or otherwise of these vendors from the place where the documents were presented for registration.

25.51 The next point on which arguments were addressed was as regards the full consideration not having been paid. In regard to this I must premise the discussion by pointing out that the recital in the registered sale deeds about the receipt of consideration, accompanied as it was in all but four of the cases by independent receipts acknowledging the said sums, raises a strong presumption in favour of the truth of those recitals. In the absence, therefore, of convincing

evidence sufficient to rebut this presumption, the case about the consideration not having been paid in full would have to be rejected.

25.52 The matters which were relied on by Government in support of their case as to the non-payment of the full consideration were mainly three —

(1) The fact that notwithstanding that the several tiller owners were illiterate, so that it was thought necessary to obtain from most of them independent receipts of their having received the full amount of consideration, in addition to the recitals in the documents, the payment was not made before the Sub-Registrar;

(2) The physical appearance of the independent receipts obtained from the vendors—24 of them which had been filed in the Sub-Registrars' office along with the sale deeds; and

(3) In the case of Bashir Ahmed the entries in the books of Fairdeal Motors as regards the total amount paid as consideration for the sales being very much less than the total amount of consideration recited in the documents as having been paid for these purchases.

It will be convenient to consider these three circumstances in that order.

(1) It is no doubt true that if consideration had been paid in the presence of the Sub-Registrar and the payment had been recorded along with the Registrar's endorsement, it would have furnished even more convincing evidence of payment than the recitals in the registered documents and the receipts which were filed along with the sale deeds, but from the mere circumstance that the payments were not made before the Sub-Registrar, it would not be possible to draw the inference that the recital in the document as to the payment of consideration was erroneous. If learned counsel were right in his submission it would mean the payment before the Sub-Registrar was really obligatory under the Law and that in the absence of such a payment the presumption was the other way and that the party who relied on the payment of consideration had to establish it independently. Surely, that is not the Law and even in the case of illiterate executants it would not be proper to deny to recitals in registered documents the weight that should be attached to them. It must in this connection be remembered that according to the rules under the Registration Act the Sub-Registrar has, in the case of illiterate executants, before registering the document to read out the contents of the document to the executant and it is only after he had satisfied himself that the executant intended to execute the document in the terms read out, that he could proceed to register the document. Though the registration endorsements in the case of the documents executed in favour of Maqsooda Begum and Abdul Majid

are not available—the originals not having been produced—the Sub-Registrar's endorsements on the seven sale deeds in favour of Bakshi Bashir Ahmed which have been produced show that the Sub-Registrar has followed the procedure prescribed by the rules and there is a recital in each of them that the document had been read over to the executant and it was thereafter that he proceeded to register it. It must, therefore, be presumed and learned counsel agreed that it would be so when I put it to him, that in the case of the other sale deeds also a similar procedure should have been followed and that the documents had been read over and explained to the executants before they were registered. It, therefore, the fact that the payment was not made before the sub-Registrar loses much of its significance. The first point on which the learned counsel for the Government relied as the circumstances pointing to the proof of their case must fail.

(2) The second point was based upon the physical features of the receipts—24 of them. Seven of them — Documents 100, 109, 112, 115, 118, 121 and 127 all dated 4th May, 1961 — are in manuscript and the others are typewritten on identical type of paper and the suggestion of Mr. Khanna was that they clearly showed that the thumb impressions on the receipts had been taken on blank pieces of paper and the text filled up later. This was particularly urged in the case of the receipts in relation to the sales to Bashir Ahmed. I will set out only one of the documents to illustrate the kind of comment made by Mr. Khanna. For instance, in Document 100 it was pointed out that there was a lot of space between the first and the second line, and between the second and the third line, but that after the third line there was a cramping and the lines were close. This would, it was said, show that the thumb impression was there before the writer started writing and that when he reached third line, the finding that there was not enough space to complete the document he wrote closer than before. Similar comments were also made about other documents. I have examined these receipts very carefully but I do not find it possible to say with certainty that the thumb impressions must have been taken on blank sheets of paper. The writer of these receipts is also Gawesh Lal who has written the applications and when one compares the writing in the applications with that in the receipts, it is found that the space between the several lines is not always the same, there being a considerable amount of variation. From the variation, therefore, in the spacing between the lines I am unable to conclude that the thumb impressions must have been there before the writing commenced. Similarly in the case of the typewritten receipts Mr. Khanna urged that in some cases where there was more matter, the typist started at an earlier point of the sheet. There are some variations in the points where the line begins in the several receipts which are typewritten, but here again I am unable to say from this feature that it

supports with certainty the point urged by learned counsel for the Government.

(3) The last of the points urged was based upon the entries in the account books of Fairdeal Motors as regards the amount paid towards the land purchased. In the ledger of Fairdeal Motors for 1961 — 1st January, 1961 to 30th June, 1961 on page 193 headed "Bakshi Bashir Ahmed (Expense Account)" against the date 26th June, 1961 there is an entry which reads: "Cost of land Judicial paper etc. 14,181.00". Now there were 14 deeds of sale under which properties were purchased on 4th May, 1961. Of these seven are the impugned sales in Allegation 2 while as regards the other seven, the vendors did not challenge the propriety of the sales and hence they are not the subject-matter of any allegation. The total consideration for the seven sales which are not impugned is Rs. 15,602.00. The value of the stamp papers used in these documents which must have been purchased by the vendee is about Rs. 700.00. The total value of the seven sales which are impugned in Allegation 2 is Rs. 18,788.00 and the value of the stamp papers involved is Rs. 993.00. Now the point Mr. Khanna made was that in respect of both these sets of sales involving a total consideration of Rs. 34,400.00 and expenditure on stamps of Rs. 1,693.00, Bashir Ahmed paid out only 14,181.00. This, therefore, was an indication that the full consideration was not paid. If the cost of the stamp papers in respect of both the sets of transactions which came to Rs. 1,693/- is deducted from Rs. 14,181/-, it would mean that he had paid only Rs. 12,488.00 as consideration for both the sales. The total of the consideration which was paid by Bashir Ahmed according to the affidavits and according to the Appendix to Schedule II in respect of the sales in his favour was Rs. 3,675.00. Mr. Khanna's submission was that out of Rs. 14,181.00 less Rs. 1,693.00 for stamps, namely Rs. 12,488.00, Rs. 3,675.00 must have represented the amount paid in respect of the seven impugned sales and the balance might have been the amounts paid to the vendors in respect of the other seven sales. In order to establish that the entry in the ledger in relation to the land purchased correctly set out the figures of expenditure incurred, learned counsel referred me to the entry in relation to the payment of the price of the land purchased from the Maharani Sahiba, wife of Dr. Karan Singh in the name of Yasmin Bakshi. The deed of sale was executed on 27th June, 1962 and 21 kanals of land was purchased for a sum of Rs. 21,000/-. The sale deed recites that the consideration had already been received in 1961. On page 114 of the ledger (Journal page 167) against the date 31st December, 1961 (Ledger Part II June 1961 to December 1961) there is a debit of Rs. 21,000/-, and the recital is that it is towards the Maharani's document. If, therefore, the real expenditure as incurred has been entered in the ledger, learned counsel argued that the entry in relation to the amount paid for the land purchased in June 1961 was also correct and if this was so it was clear and indubitable proof that Bashir Ahmed had paid very much less than the amount set out in

the several sale deeds. While I cannot say that this argument is without force I am unable to hold merely on the basis of this entry, that the full amount of the consideration was not paid. I must in the first place point out that as according to learned counsel for the Government this entry represented the amounts paid out for all the 14 deeds of purchase it would be seen that the sum of Rs.14,181/- is hardly sufficient even to account for the price paid for the seven sales, which are not impugned, viz. Rs. 15,602/- plus Rs. 700/- for stamp papers. It follows that he must have obtained monies from some other account or source to pay even for them. It is only by assuming that the figure in the account represents the sum paid for the impugned sales alone that it could furnish any evidence of payment of a less sum than recited in the sale deed. But then it would not square with the case of the Government that Bashir Ahmed paid a total sum of Rs. 3675/- in respect of these seven sales. So on either footing, Government cannot establish their case which they have put forward as regards partial failure of consideration in regard to these seven sales.

25.53 Besides, one must remember that this is a ledger of Fairdeal Motors and, therefore, it represents only monies taken out of this firm. For aught we know Bashir Ahmed might have other accounts in his own name and he owned several other concerns which ran in different names which might have monies, or he might even have cash on hand unaccounted in the books. On the basis of this entry, therefore, I am unable to hold that the full amount of the consideration had not been paid.

25.54 If this is so in the case of Bashir Ahmed, in regard to whom there was at least this entry in the ledger, there was not even this type of evidence available or produced in the case of Abdul Majid and Maqsooda Begum. Of course, Abdul Majid's books of account have not been produced in spite of notice, but as the presumption raised by the recitals in a registered document has not been rebutted, I cannot draw any inference against him on the score of non-production in regard to this point. The presumption, therefore, arising out of the recitals in the sale deeds must apply in those cases in full force and I have, therefore, to hold that it has not been proved that the full consideration as recited in the several deeds has not been paid.

25.55 It was pointed out that in the case of the four sale deeds in favour of Abdul Majid in January 1963 there were no independent receipts filed along with the sale deeds and this was relied on as a suspicious circumstance, but in my opinion the existence of the receipts or of their non-existence is merely superfluous in the light of the recitals in the registered documents which must have been explained to the executants.

25.56 Lastly, there is one matter which I have reserved to the last and that is as regards the lands having been sold

at an under-value and this has been relied on as a proof of coercion and undue influence. In support of this case reliance was placed upon Document 186 which are copies of two sale deeds of an extent of 1 kanal 10 marlas and 1 kanal 13 marlas of land for Rs. 4,000/- and Rs. 7,000/- respectively. On the basis of this, taking particularly the sale deed for Rs. 7,000/-, it was submitted that the average price of land in the locality in September 1961—the date of these two sale deeds—would be between Rs. 4,000/- and Rs. 5,000/- a kanal and judged by this price it was urged that the price paid for the impugned sale deeds was very low. The lands sold under Document 186 are described as "floating garden" lands (Demb-Abi). There are no materials to compare the physical advantages of the lands sold under Document 186 with those conveyed by the disputed sales, and the amount of variation between the prices disclosed by the two sales is itself evidence that these play a vital role in the determination of the price. Besides, it has to be pointed out that the price per kanal of the land under the several sale deeds which are impugned is not identical but varies from land to land and it would not be correct to average them for the purpose of finding out the propriety of the price paid. Again, there have been sales in 1961 and 1962 of nearby lands by the Maharani Sahiba which have been purchased by Bashir Ahmad and Abdul Majid. Learned counsel for the Government conceded that the price paid to the Maharani Sahiba was not more than what was paid to the tiller-owners under the impugned sales. In the circumstances I consider that there is no justification for the contention that the prices recited in the sale deeds did not represent the market value of the land in 1961 and 1962 when the transactions took place, or that in any event these were so grossly under-valued as to justify any inference of coercion or fraud.

25.57 Learned counsel Mr. Khanna at the fag end of the arguments on the allegation drew my attention to a draft Town Planning Scheme for the area notified on 15th October, 1962 by which the area covered by the lands purchased from the tiller-owners referred to in Allegation 2 was to be developed. The suggestion was that these acquisitions were made at a low cost in order that when the scheme came through and the area was developed, the lands would increase in value and those reserved for common amenities—and some of the lands fell under that category—would be acquired by the Town Planning Authority at a greatly increased value. It was also pointed out that among the members of the Committee who settled this scheme which was notified, was the Deputy Commissioner who on that date was Mr. Mir Nasrullah. It was, therefore, urged that these acquisitions were really part of a grand scheme to benefit at the expense of the tiller-owners on a large scale. It was, however, admitted that this Town Planning Scheme fell through. While it is possible that Bakshi Abdul Majid might have been aware of what was happening in the Town Planning Committee, and might even have considered the purchases as profitable investments with good prospects, I am unable to see how it affects the point,

I have to decide in the inquiry, namely whether coercion or fraud was practised on the tiller-owners by Abdul Majid with or without the aid of anyone and whether this was facilitated by the abuse of power on the part of the respondent.

25.58 The net result of this discussion I might now summarise and that is that there is no sufficient material placed before me for holding that the purchases were effected by the exercise of undue influence or coercion.

25.59 I now come to the last part of this allegation and that is the part played by the respondent in getting these properties for his brother and son. In their statement of the case the Government stated that the tiller-owners had approached Bakshi Ghulam Mohd, seeking redress against the high-handed manner in which Abdul Majid with the assistance of the Deputy Commissioner Mr. Mir Nasrullah was acting and sought his intervention to stop the harassment as well as to annul the things which had been done. This, it would be noticed, is just in line with the penultimate sentence in the allegation as notified. The only point of difference between the two lay in this that whereas the notification spoke as if the respondent was approached only one, the statement of the case as well as the affidavits filed in support, referred to three occasions when the tiller-owners approached the respondent and they stated the replies which it was alleged that he gave on the three occasions to the members of the several deputation. At the stage of the preliminary hearing Mr. Sharma, learned counsel who appeared for the respondent, objected to the statement of the case as travelling beyond the notification and submitted that I should insist upon the Government confining themselves to only one of the three deputations, of which the deponents of the several affidavits spoke. In the order which I passed then, I held that the variation was not substantial and that the Government need not be circumscribed as suggested but that it would be open to them to establish the case in the several affidavits. But that obviously proceeded on the basis that the Government would place before me material on which I could act in support of their version. As there were no documents on which reliance could be placed in support of any deputation having met the respondent either once or more than once, the only manner in which it could have been established that the grievances of these tiller-owners and their complaint against the respondent's brother and son-in-law was brought to his notice and that, at a stage, when he could have interfered to prevent the transactions being completed and that he refused to interfere, could only have been by calling the several tiller-owners as witnesses to speak to these facts. This, however, the Government failed to do. The result, therefore, is that there is no material in proof of the respondent having been informed of the pressure, coercion, undue influence or fraud supposed to have been exercised on the tiller-owners not

to speak of his refusal to interfere when approached. This part of the Government's case therefore, has to be rejected as not established.

25.60 Mr. Khanna, however, urged two points as emerging from the admitted documents. His first was that Mr. Mir Nasrullah would not have acted as he did (1) in receiving the applications addressed to the Minister and not entering them in his receipt register; (2) in getting these applications without the parties being present and acting on them with the knowledge that the thumb impressions were not those of whom they purported to be; and (3) in sending them up to the Minister without any inquiry as to (a) whether the applicants were really desirous of selling the lands and (b) whether the intending purchaser bought the land for building purposes, and without any processing in the sense that it was not sent to the Tehsildar for inquiry and report and acting in so casual and illegal a manner, unless he had the support of the respondent in doing what he did. It was, therefore, urged that the respondent must have known of what was happening and that it was because of his knowledge and his implied consent to the manner in which the Deputy Commissioner was acting seeing that we have so much of irregularity and fraud in the applications for permission to sell. I do not find it possible to accept this argument for more than one reason. In the first place having regard to his position as Deputy Commissioner and the relationship which Bashir Ahmed and Abdul Majid bore to him, it is not necessary to assume that Mr. Mir Nasrullah could have acted as he did only with the consent of the respondent. But this speculation apart, there is a weightier reason why I should reject this argument. Mr. Mir Nasrullah's name is no doubt mentioned in the Allegation as notified, but it is not suggested there that Mr. Mir Nasrullah committed the irregularity in regard to the applications with the respondent's consent or even that the latter had knowledge of these irregularities or fraud at that stage. As the notification directs the Commission to confine itself to the allegations set out in the second Schedule, this would be beyond the scope of the inquiry. Besides, even in the statement of the case filed by the Government the suggestion now put forward before me is not even hinted, so that the respondent had never any opportunity to meet a case of this type. I have, therefore, no hesitation in rejecting this submission as one which the Government is not entitled to raise against the respondent.

25.61 The second point that was suggested was in the Registrar accepting presentation of the several documents on the spot contrary to the rules. In addition it was said that there were several documents in which the executants had not really affixed their thumb impressions but the Registrar departing from the rules and the law registered these documents and at a place where he was not bound to register. This could only have been possible, he submitted, if the respondent had directed the Registrar to act as required to do by Abdul Majid

or Bashir Ahmed. I do not see any basis for this also. This again is not in the allegation as notified, nor in the statement of the case elaborating the allegation as notified. I, therefore, reject this submission also.

25.62 These were the only points urged to support the case that the respondent had anything to do with the improper acquisition of the properties specified in Allegation 2 read with the Appendix to the second Schedule to the notification. The result, therefore, is that I find that though Mr. Nasrullah's conduct in connection with the applications for permission to sell was far from creditable, and that there has been grave irregularities, fraud and forgery in connection with the applications seeking permission to sell the land, the Government have not established that there has been any abuse of power on the part of the respondent in the acquisition of the several items of property from the 40 tiller-owners specified in Allegation 2 whose names and details are set out in the Appendix to Schedule II.

26.1 Having acquired the several items of property mentioned in Allegation 2 and set out in detail in the Appendix to Schedule II to the notification, it is the case of the Government that Abdul Majid and Bakshi Bashir Ahmed trespassed upon (a) further lands belonging to the tiller owners from whom they had acquired lands by purchase as well as upon those belonging to others; (b) filled up waterways which ran through these lands which were public ways as well as some which provided the tillers with access to the lands; and (c) occupied communal land such as a graveyard and public pathways, the total extent of these encroachments being 77 kanals and 18 marlas. These encroachments may be classified under three heads—

(1) Encroachment on adjoining areas of the tiller-owners who had sold their lands to one of these three individuals to the extent of 13 kanals and 18 marlas.

(2) Property of the State, i. e. communal property—graveyard and pathways, to the extent of 5 kanals and 4 marlas.

(3) Property including canals whose ownership was vested in the privy purse, i. e. in the Sadr-i-Riyasat, but on which they were cultivating tenants in possession, to the extent of 58 kanals and 16 marlas.

They could also be classified under three different heads based upon the person in possession. Bashir Ahmed's encroachment comprised two entire khasra numbers and parts of four khasra numbers, the total extent covered being 12 kanals and 2 marlas. Between them Maqsoola Begum and Abdul Majid have encroached upon 25 kanals and 13 marlas besides 5 kanals and 4 marlas consisting of a graveyard and certain public pathways. Besides this, all the three together have encroached upon 34 kanals and 19 marlas comprised in khasra No. 203 which

are classified as a nullah. This encroachment is in substance the charge contained in Allegation 3 which runs in these terms:

"Land measuring 80 kanals and 19 marlas belonging to State and to private persons, situated adjacent to the land acquired by Bakshi Bashir, Bakshi Majid and Smt. Maqsooda in Villages Asthal and Zeethyeer (See allegation 2) was encroached upon and entries in the revenue record made in their favour."

262 Before proceeding to discuss the case of the Government in regard to this encroachment, a reference to the reply of Bakshi Abdul Majid who has filed the main statement so far as merits of the case are concerned in relation to this charge might greatly facilitate the discussion of the charge contained in this allegation. He does not deny that the vendees, i. e. himself, his wife and his nephew are in possession of this extra amount of land beyond what has been conveyed to him or them under the various sale deeds. Coming to the details in relation to the nullahs or water channels, he states in paragraph 4—

"The vendees have taken possession of the land..... in accordance with the Nishandehi given by the vendors.....these were only Nullaha and of no use and utility to the vendors otherwise the vendors would have sold it along with the land sold. ... In regard to alleged encroachments of land belonging to other persons it is submitted these were nullahs adjacent to the lands purchased by the vendees and the vendors while showing to the vendees the lands purchased by them showed these nullahs as being included in the land sold. Besides the said Nullahs creeping through the lands purchased by the respondent and the other vendees on either side by virtue of their very situation came to be property of the respondent and other vendees as without this the respondent and other vendees could not enjoy the properties purchased by the vendees as such..... The vendees in fact at very high cost filled up these nullahs developed the same."

Regarding Khewat 173 which was stated to be the graveyard, his reply was—

"This too was a nullah and the question of its ever being used as a graveyard does not arise and no indication of its ever being used as a graveyard ever existed in that ... the respondent and other vendees being devout Muslims they would be the last to defile this graveyard."

Lastly, he says that nobody has complained regarding this encroachment. There was one point made about Khasra numbers 196 and 198 to which I shall refer separately.

26.3 If analysed, the defence amounts to this. He admits that he and the other vendees are in possession of the land very much in excess of the lands purchased and of the extent described in the several documents filed by the Government. But his explanation is that they came into possession in some cases because (1) the vendors themselves indicated that this larger extent was in reality the property which they had sold; (2) there were of course nullahs and waterways but they became the owners of these nullahs in one of the two ways (a) by reason of these nullahs being pointed out as being of the property sold, (b) or alternatively by reason of their acquiring title to them as incidental to their ownership of the property on either side; and (3) so far as the graveyard in Khasra 173 is concerned, that it was not a graveyard but was a canal which had been filled up. In view of the admission regarding the encroachment and this defence set up, it is not necessary to go minutely into the evidence which has been placed before me to establish the factum of the encroachment.

26.4 There is only one matter of detail about these encroachments regarding which there is a dispute and to this I shall refer in the first instance before proceeding to deal with the defence raised. This is in relation to khasra numbers 196 and 198. Paragraph 5 of the reply deals with this particular trespass. As the paragraph is rather obscure, I believe it would be better to set it out in full. He says—

“Regarding khasra No. 198 and 196 it is submitted that the owners of these lands have been given land comprised in khasra No. 145 in exchange and they are in possession of the same, as such the question of any encroachment does not arise.”

Khasra 198 was purchased by Bashir Ahmed from Kabir Dar son of Qadir Dar by a deed dated 4th May, 1961 (Document 114) while khasra No. 196 was purchased by him from Rehman son of Mohd. Chaupan also by a deed dated 4th May, 1961 which sale, however, is not impugned in Allegation 2, and the Girdawari shows that Bashir Ahmed is in possession of these two items. There is no deed by which he obtained any title to Field No. 145 and it is not, therefore, possible to see how he was able to give the land comprised in khasra No. 145 in exchange for Field No. 198 and 196. Besides, the girdawari in regard to Field No. 145 shows Bashir Ahmed as in possession. In the face of these admitted facts and entries I do not find it possible to understand the defence that is raised in paragraph 5. But this, however, is merely by the way.

26.5 I shall now proceed to deal with the defence that has been raised to the encroachments which are not denied but which are explained as not being in truth encroachments. It will be convenient to take the defence in the following order:—

(1) That the several vendors pointed out the additional land as well as the nullahs adjoining their lands as part of the property sold under the several sale deeds.

(2) The alternative case that the nullahs passed to the vendees as incidental to the sale of the firm lands and, that, therefore, the vendees were entitled to fill them up.

(3) The case as regards the graveyard and public pathways. Though Abdul Majid has stated in his reply which has been so, solemnly affirmed that the several vendors pointed out to him the extents of lands outside the measurements given in the sale deeds as part of the property conveyed by them, he has placed no material before the Commission to support this case. But apart from this circumstance, it looks most unusual and, therefore, not credible that these tiller-owners should agree to part with a larger extent of land than they had bargained and sold under the several sale deeds. It is found on an examination of the relevant revenue records including the Girdawari that most of these lands which are not specifically included in the sale deeds but of which possession was taken, are cultivable lands in which among others, melons, red pepper, brinjals, peas, turnips and potatoes were being cultivated and this makes it altogether extremely unlikely that they voluntarily handed over possession of more land than what was comprised in the sale deeds. I have examined the details of the 45 items of lands which are set out in the statement (Document 2) of this allegation and have compared them with the Girdawari for the purpose of ascertaining the type of cultivation on these lands during the several years from 1959 up-to-date. For instance, one of the encroachments is in Field No. 219 and the extent of the encroachment is 3 kanals and 14 marlas and the Girdawari shows that on this land turnips and potatoes were grown. Again item 35 in the list of encroachments (Document 3) is willow plantation though the extent is only one marla. In the absence, therefore, of proper material before me to show that the several tiller-owners invited Abdul Majid or Bashir Ahmed to occupy more land than what they had sold, I must necessarily hold that the occupation of these lands is a case of a deliberate trespass and encroachment on the lands of these tiller-owners. By the way, it is rather hard to see why the sale deeds took care to mention the exact extent of the several khasra numbers in kanals, marlas and square feet, which was being conveyed, if the intention of the vendors was to convey under the deeds the entire extent of the khasra numbers. Furthermore, a look at the sketch which has been prepared by the Government showing the several khasra numbers which have been encroached upon, shows that the encroachment followed a

pattern, namely the lands encroached being between the property purchased and the Boulevard Road and by reason of the encroachment the entire property right up to the Boulevard Road came to be under the occupation of one or other of these three owners. This, I consider, is another circumstance which militates against the theory of the voluntary parting of the possession by the several tiller-owners of their lands.

26.6 The next matter to be considered relates to the filling up of the nullahs, treating the nullahs as property of which possession was voluntarily given to the vendees or of which the vendees were entitled under the law to take possession by virtue of their ownership of the land on either side of the nullah. This second alternative is not very consistent with the first, but ignoring this, my comment upon the story that tiller-owners invited the vendees to occupy the nullahs as they had no use for them is the same as the comment I have made as regards the encroachment on what were then firm lands. There is no material placed before me as regards this and it is very unlikely and incredible that they would have parted with the possession of these nullahs for no consideration, particularly as in the case of several items, the nullahs provided access to lands still retained by the tiller-owners, or if they really intended to convey them, it would not have been so specified in the sale deeds.

26.7 The other alternative case set up by Abdul Majid is that under the law he and the other vendees were entitled as an incident to their purchase of the lands covered by the sale deeds to the ownership and possession of the nullahs. Learned council for the Government have contested this position in law and have referred me to the relevant enactments and rules bearing upon the point. It was submitted by Mr. Khanna that these waterways were "common lands" which were governed by the Jammu & Kashmir Common Lands (Regulation) Act, 1936 (Act XXIV of 1936). Section 3 of this enactment confers upon every inhabitant of a village the right of user "in respect of any road channel in a village including the village of which he is not an inhabitant", and section 4 imposes a penalty for the denial of or obstruction to the exercise of the right or for encroachment upon such channels and this section enacts, to quote the relevant words—

" where any person has taken possession of or brought under cultivation or otherwise encroached upon any road path, channel, drain a Revenue Officer may on his own motion or on the application of any person interested and after such enquiry as may be deemed necessary—

X X X

(b) eject the person who has taken possession of or brought under cultivation or otherwise encroached upon such road path, channel "

and goes on to provide for the imposition of a fine on such persons who have encroached upon such roads or channels. Under section 2 of this enactment words and expressions used in the Act were to have the same meaning as in the Kashmir Land Revenue Act of 1996 and if one turns to that enactment, section 3(2) defines land to mean to include "areas covered by or fields floating over water".

26.8 Besides, it was urged that the occupation of the roads, pathways and the filling up of the water channels was in violation of the rules enacted to regulate the use of Khalsa waste published in the State Gazette on 14th Phagan, 1982 (vide Rules, Orders and Notifications in relation to Nautors etc. published by the Government of Jammu and Kashmir—page 41). Rule 3 of these rules enables Khalsa waste land in the joint possession of village landholders for common use as village roads, burial grounds and the like to be recorded as Shamilat by mutation, and rule 4 prescribes the authority who could sanction the mutation. Rule 11 of these rules enacts—

"All future Nautors (trespasses) in Khalsa waste after the Shamilat has been defined under these rules shall be dealt with under the State Waste Land Rules."

The rules of the Revenue Department—Ailan No. 5 dated 23rd Magh, 1989 which clarify the earlier Shamilat Rules were also referred to. Paragraph 9 of these rules was particularly stressed and it is stated—

"Assamis who have made Najaiz Nautors from prohibited areas such as Kuhls, graveyards, roads.... etc. shall be rejected on the spot forthwith according to the provisions of Section 155 of the Land Revenue Regulation No. 1 of 1980 and revenue assessed and recovered thereon from the date of possession upto the date of ejectment. No Najaiz Nautor Kuninda should, however, be allowed to remain in possession of such Nautors."

And paragraph 11 says—

"All mutations made in contravention of the rules as explained above will be annulled."

26.9 Based upon these statutory provisions, the submission of Mr. Khanna was that these water channels which had been classified as nullahs in the revenue records were used as a source of irrigation of the lands to which they adjoined and also a public pathway to reach the Boulevard which is a highway. It was, however, submitted that far from the law conferring upon the neighbouring owner the right to fill up these nullahs, the encroachment on them as the filling up of them were made offences punishable with fine under the Common Lands Regulation Act of 1956. Having regard to the

location of these channels, I see considerable force in the submission of learned counsel but there is one matter by reason of which I find it would not be proper for me to record any finding in respect of these encroachments of the nullahs. The Commission can only inquire into matters which transpired before October 1963, i. e. during the period when the respondent held the office of the Prime Minister of the State. In answer to a question by me as to the date when according to the Government the nullahs were filled up and they were turned into firm land, it was stated that they were unable to specify the exact dates, but it was probable that the nullahs became by being filled up firm land possibly only after October 1963. This is not unlikely because the bulk of the purchases by Abdul Majid which were in the name of his wife was in August 1962 and the purchases by him in his own name were in January 1963. In view of the circumstance that the filling up of these nullahs and the encroachments becoming perfected by the nullahs becoming firm ground by filling took place is not shown to have taken place before October 1963, I do not desire to record any definite finding as to the legality of that encroachment and whether it offends the law as contended by Mr. Khanna learned counsel for the Government.

26.10 The last of the points that requires to be considered is as regards the encroachment on the graveyard. Now the graveyard is Khasra No. 173 of an extent of 4 kanals and 9 marlas and I have already pointed out that in paragraph 6 of his reply Abdul Majid admits that he is in occupation of this Khasra. I have also pointed out that according to Abdul Majid Survey No. 173 was a nullah when he bought it and, therefore there was no question of its being a graveyard and that he filled up the nullah and made it a firm ground by virtue of the right which he has asserted in respect of the other portions of the nullah.

26.11 I consider that this statement in the reply is deliberately false. Government have produced a copy of the extract from the Jamabandi prepared in the year Svt. 1977 (i. e. 1920). It shows that Field No. 173 previously bore Field No. 199 and is said to be the property of the State (Khalsa) used as a burial ground (vide column No. 7) and stated to be in the occupation of Muslims, i. e. for the purpose of the burial. The extent of the land is shown as 4 kanals and 9 marlas. We have next the Jamadandi of (1998-1999 (1941-1942). The State is stated to be the owner and the land is classified as "old waste unculturable, burial ground." In the Girdawari of the village it is again shown as a graveyard in Kharif 1961 A. D. but from Rabi 1962 A. D. onwards there is no description except that it is "old waste and unculturable", but from Rabi 1963 onwards there are entries showing again its classification as a graveyard. So, the story that field No. 173 was a nullah is wholly untrue. This apart, a look at the sketch which is among the documents in Allegation 3 shows that

Field No. 173 is completely land-locked—on the north we have Field No. 170, towards the east Fields Nos 171 and 172, to the south Fields 174 and 346 and on the west Fields 348 and 349. The assertion that Field 173 was at the time of purchase by Maqsooda Begum a nullah is utterly baseless. It is clearly established that Survey No. 173 was a graveyard and therefore, public communal property which had been deliberately encroached upon by Abdul Majid.

26.12 In addition to this graveyard there are a few others which have been classified as public pathways, for instance, item 15 of Document 2 (Min. 151), item 17 (Min. 159), item 19 (Min. 352), item 20 (Min. 353). These are entered as roads or pathways in the Jamabandi. The extents of these are very small and I have not thought it worthwhile to examine the history of the several entries in the Jamabandis from time to time. But if these are pathways and they are public pathways, what applies to the graveyard would apply to them also and the encroachment on them would be illegal and constitute an offence under the enactment already referred to.

26.13 To sum up, on the admission of Abul Majid in his statement in reply which statement has been adopted by Bashir Ahmed and Mst. Maqsooda Begum, possession of the lands adjacent to that which were purchased, was taken at the same time as the lands purchased. Therefore, this was long anterior to October, 1963. But as regards the nullahs it is not clear when they were filled up, and Government have not been able to establish that this was before October 1963.

26.14 So much for the factum of the encroachment and its legality *vis-a-vis* Abdul Majid and the other vendees and the neighbouring tillers or owners.

26.15 The result is that admittedly Bashir Ahmed, Abdul Majid and his wife are in possession and enjoyment of valuable property to which they can claim no legal title or right. The value of the property which they have obtained improperly by trespass or encroachment, based on the average price paid by Bashir Ahmed on his sales, comes to Rs. 42,350/- for the 12 kanals 2 marlas of land in his possession. In the case of Abdul Majid and his wife Maqsooda Begum together they are in possession of 30 kanals 17 marlas of land and based on the average price of about Rs. 2,000/- per kanal disclosed by their purchases, the value of the encroached extent comes to Rs. 1,07,975. These two total Rs. 1,50,325/- and this amount I consider was again which accrued to them no doubt only indirectly by the

improprieties connected with the application by the tiller-owners for permission to sell defined extents of their lands.

26.16 The next question is as regards the basis upon which the respondent could be held guilty of abuse of power in either effecting these encroachments or in Abdul Majid and others remaining in possession of the property trespassed. So far as the allegation as notified is concerned, no specific fact is recited, nor a particular mode indicated by which the respondent either directed or connived at, the encroachments. One has, therefore, to proceed upon the note at the end of the Schedule II as the case of the Government to establish the charge against the respondent. I have, therefore, to determine the case of the Government by reference to the statement of the case. Here again their case suffers from vagueness because we are referred back to the depositions by the tiller-owners to the respondent at which it is stated they brought to his notice their complaint regarding these encroachments also, but as these several deponents of the affidavits have not been called for oral examination, I do not consider the statements in their affidavits as any material on which I could act. It was, however, submitted by Mr. Khanna that Abdul Majid was not likely to have acted in high-handed manner that he did by trespassing upon the lands of the tiller-owners, occupying land reserved for graveyards or pathways and filling up public channels and nullahs, unless he had the backing of his brother. But I am unable to accept this argument for the reason that if the affidavits are discarded there is no material on the basis of which knowledge of the encroachments could be brought home to the respondent, with the result that though the encroachments which are really admitted and some of them are illegal and there are entries in the records showing possession by Abdul Majid, Maqsooda Begum and Bashir Ahmad as stated in the allegation, still the Government have not been able to establish that this was due to or became possible by any abuse of power on the part of the respondent and I find accordingly.

27.1. Next to Bakshi Abdul Majid, the principal person or whom favours are stated to have been conferred by the respondent by abusing his official position was his brother Bakshi Ghulam Nabi who, as I have already stated, had shown an interest and specialised in forest contracts. It is said that in respect of the three of the leases in which Ghulam Nabi was interested, undue remission of royalty had been made because of the intervention of the respondent. These are the charges which are set out in Allegations 29 and 31 which I shall take up for consideration next.

27.2. It is recited in the reference by which the disputes within the family of Bakshi Abdul Majid, his brothers, cousins etc, were referred to the arbitration of Mr. J. N. Bhat that a forest business under the name Fairdeal Forests was commenced by Mirza Ghulam Mustafa (husband of the sister of the respondent—item 4 of Part 'B' of Schedule I), Bakshi Mohd. Shafi (son of Haji Bakshi Ghulam Nabi—item 17 of Part 'A' of Schedule I) and Bakshi Ghulam Hussain (cousin of the respondent—item 44 in Schedule I Part 'A'). This firm was stated to be an offshoot of Feroze & Co. and constituted in order to do forest contract business on behalf of the family. The exact date when this firm came into existence is not known but it was in existence in or about 1958.

27.3. Tenders were invited in 1958 for the right to cut and remove trees in several forests in the Kashmir Valley. Among them was a one-year lease of Compartment 27-Budnambal in the Ramhal Range of Langet Division. The total estimated volume of timber in the compartment which was to be cut and removed by the lessee was 3,37,18/- cft. The last date for the receipt of tenders was 5th November, 1958 and the highest tenderer was a firm under the name Ghulam Nabi Haji Noor-ud-Din, a partnership concern in which the main partner was Ghulam Nabi, the brother of the respondent. After the acceptance of the tender by the Government and before the agreement was executed, the tenderer intimated to the Government that the contract might be assigned to the Fairdeal Forest Co. and this having been agreed to, the agreement was executed between that firm and the Government and the work order was issued to them. The period within which the felling and removal had to be completed expired by 15th December, 1960, but by orders of Government this was extended.

27.4. Under the award of Mr. J. N. Bhat which was to have effect from 1st January, 1961 and which in fact merely gave legal effect to the arrangement already arrived at between the parties, the forest businesses including Fairdeal Forest Co. ceased to be a family concern and was assigned to the share of Haji Ghulam Nabi and his sons. On 7th January, 1961 Fairdeal Forest Co. which by this date had therefore come under the sole proprietorship of Haji Ghulam Nabi, made an application to the Government for the reduction of the royalty on the ground of loss sustained by reason of abnormal rot, and besides made a claim for losses suffered by the floods which occurred in July 1959. This application was under consideration of the authorities for a considerable time and as a result of the orders of Government, a remission of Rs. 6½ lakhs, was allowed to the firm for loss by abnormal rot, besides a flood

loss of Rs. 1,12,000 odd, making in all a total of Rs. 7,62,000 odd. The orders in regard to this were passed and the remission finally granted in May 1963. It is the case of the Government that there was no justification for these remissions of the royalty on the ground of rot and that the material on the basis of which a case for remission was built up was fabricated to justify the order and similarly that the remission on account of flood was granted even though the firm sustained really no loss on account of floods and that all this financial advantage to the extent of Rs. 7,62,000 odd was conferred on the firm by reason of the abuse of power on the part of the respondent who desired to benefit his brother. The relevant allegation dealing with this is Allegation 29 which runs as follows :---

"By the abuse and exploitation of the official position of Bakshi Ghulam Mohammad undue pecuniary advantage was obtained by his relatives in the year 1963 inasmuch as M/s Fairdeal Forest Company, a concern owned by his brother Bakshi Ghulam Nabi, who had been granted a lease in Langet Forest Division, Compartment 27 Budnambal, were given undue remission of Royalty of over Rs. 6 lakhs."

27.5. In this case I consider it would be convenient to refer to the answer of the respondent and of Ghulam Nabi who in response to a notice to him under rule 6 (1) (a) has filed a reply, after referring to and commenting on the documents on which reliance has been placed by the Government. I need only add that in a large number of affidavits which have been filed in regard to this allegation there are statements as to the officers having manipulated the figures at the instance of the respondent, but as the deponents of these affidavits have not been examined, I do not propose to refer to the contents of these affidavits, but will proceed only on the basis of the documents and the inferences which flow from them.

27.6. In dealing with the documents, I propose to set out and discuss first the documents in relation to the remission of royalty which, was granted on the basis of abnormal rot in the trees marked fit and then take up the documents and facts in relation to the remission for floods loss as these two stand on very different footings.

27.7. Document 2 is the tender notice and this specifies the volume of timber to be sold under the lease calculated according to the standard volume tables in use. In view of the facts to be stated subsequently, I might even here refer to the circumstance that the compartment which was the subject-matter of this lease had nearly equal quantities of Deodar and Kail. Deodar trees of a girth of 18" and over were 1,43,355 cft. in volume while Kail fit trees of the same girth were 1,45,919 cft. Along with this, the unfit standing green and dry Deodar trees had a volume of 6,326 cft. while unfit Kail had a volume of 38,427 cft. which will show that in Kail the proportion of unfit to the total Kail was about 20%.

27.8. The firm of Ghulam Nabi Haji Noor-ud-Din were the highest tenderers when the tenders were opened on 5th November, 1958

and their tender was for Rs. 12,51,000 for all the marked trees (Document 3). The Conservator of Forests submitted a report to the Chief Conservator of Forests soliciting sanction of Government for those tenders whose acceptance he recommended. There were five tenders for compartment 27-Budnambal and Ghulam Nabi's being the highest was recommended for acceptance (Document 4). There were three other tenders by Ghulam Nabi and his associates for other leases; one was by the Fairdeal Forest Co. for a lease in Gulmarg and the others were for compartments 51, 51a, 52b and 53a South Lolab, 53b, 54a and 54b South Lolab and compartment 9 Rajwar, the last two being the subject-matter of the charge in Allegation 31. In the case of these two leases as well, claims were made for remission of royalty which also were allowed but as that forms the subject-matter of the charge contained in Allegation 31, it would be convenient to deal with the details of those leases when dealing with that allegation. For the present purpose it is sufficient to point out that the Conservator of Forests recommended the lease of compartment 27-Budnambal for acceptance in these terms (vide Document 4 dated 5th November, 1968) :—

“This offer works out to Rs. 5.53 nP per cft deodar standing as per above ratio (Deodar: Kail: Fir 1 : 2 : 3). The offer is quite reasonable and is recommended for sanction.”

It may be pointed out that the next highest tender for the lease of this compartment was by Shahdad Timbers and was for Rs. 11,37,952/-. On receipt of Document 4 the Chief Conservator addressed Document 5 dated 6th November 1958 to the Secretary to Government, Forest Department. He pointed out that the Ghulam Nabi group had been the highest tenderers in respect of three leases in their own name and one in the name of Fairdeal Forest Co., the total amount bid by them being Rs. 82.34 lakhs, and he added—

“With a view to ascertain if these gentlemen would be able to work all the four leases simultaneously without involving any risks in supplying timber towards our Railway and DGDS commitments, I had sent for them. From the discussions with them I gather that they are not very keen or particular about working all the four leases. In fact they expressed themselves in favour of foregoing one of these leases v.z. group No. 6 . . . In regard to other three tenders, this firm's highest offer may please be sanctioned.”

I am drawing pointed attention to this because there is no question of any inadvertance on the part of the firm in making the tender, for the firm had a discussion with the Chief Conservator of Forests and it was after this that they gave up one lease in which they had offered Rs. 27 lakhs and retained the other three. The Government required some clarification from the Chief Conservator in view of what they considered to be some contradictory reasoning in Document 5 and after their obtaining this clarification sanction was accorded for the acceptance of the highest tender of 27-Budnambal in favour of Ghulam Nabi Haji Noor-ud-Din for a sum of Rs. 12.51 lakhs. I might add that the two other leases in South Lolab and 9 Rajwar in Langet Division were also

sanctioned by the same order (Document 7 dated 14th November, 1958). Even before this order was communicated, Ghulam Nabi Haji Noor-ud-Din sought permission by a letter bearing no date, but of November 1958 addressed to the Forest Minister to transfer this lease to Fairdeal Forest Co. represented by Mirza Ghulam Mustafa and Bakshi Ghulam Hussain (Document 8). This letter also contained the consent of Fairdeal Forest Co. to work out the lease according to the terms and conditions of the tender notice. This was apparently received by the 17th November and the transfer in favour of Fairdeal Forest Co. was agreed to by Government (pending competent sanction) and a communication to this effect was addressed to the Chief Conservator of Forests (Document 9 dated 17th November, 1958). The office copy of this letter bears the signature of Mr. Sogami, Forest Minister stating: "Seen". It might be added that the formal Government Order sanctioning the transfer and confirming the Forest Minister's action was issued only on 21st June, 1960 (Document 10). The Minister's sanction having been obtained, an agreement was entered into with the Fairdeal Forest Co. on 17th November, 1958 (Document 14). The work order was issued on 19th November, 1958 (Document 13) the Fairdeal Forest Co. having furnished security by transferring certain credits due to them and to their partners from the Government.

27.9. The firm of Fairdeal Forest Co. started work on receipt of the work order and though the period of the working according to the agreement was only up to the 15th December, 1960, there was time for the removal of the logs till November, 1961. During the period up to the end of December 1960, quite a large number of trees felled, logs were cut and over 2 lakh cft. of Kail and Deodar were removed from the forest. In August, 1959 it was stated by the Fairdeal Forest Co. that some loss had been suffered by them on account of flood, but the amount of the loss was not specified nor details regarding it given. Nothing further was done in regard to this claim of flood loss till the end of the year, no reminder having been sent, nor was any complaint made during the year as regards any claim for remission of royalty on the basis of abnormal rot in the trees. For instance, there is in the files a letter dated 20th April, 1959 written by the firm to the Range Officer, Fairdeal Forest Co. seeking permission to remove 1495 logs of Deodar and 940 logs of Kail which had been cut by that date (having a total volume of 42,621 cft. and made up of 24,640 cft. of Deodar and 17,981 cft. of Kail). A statement listing the logs and their volume is attached to this application for permission to remove as required by the rules and though there is a column in it for remarks, it is nowhere stated that any of trees cut were unsound (vide pages 76-79 of the Range Office File no: 27-Budnambal). I am mentioning this only for the purpose of showing that so long as Fairdeal Forest Co. worked the lease and they did this with vigour, there was no complaint of abnormal rot, but on the other hand they cut and converted the trees and transported the timber without any complaint.

27.10. Feroze & Co. was dissolved as and from 31st December, 1960 under the agreements entered into between the several members of the family and Fairdeal Forest Co. fell to the share of Bakshi Ghulam Nabi on and from 1st January, 1961. Thereafter a partnership was

entered into between Ghulam Nabi and his five sons which according to the partnership deed (Document 48) was to have effect from the 1st January, 1961. Clause (3) of this deed stipulated "that the business of the partnership shall be continued in the name of Fairdeal Forest Co. and shall be deemed to be one received in consideration of the investment of parties 1-4 (*i.e.* Ghulam Nabi and three of his sons) in the firm of Feroze & Co." The partnership business was to extend to the extraction of timber from the compartment at Budnambal and in other businesses which the parties might agree to undertake. As regards the relationship of this new firm with the original firm Fairdeal Forest Co., the recital was as follows :—

"Whereas a partnership under the name and style of Haji Ghulam Nabi Noordin secured a forest lease of compartment No. 27 Budnambal and whereas the said Haji Ghulam Nabi Noordin transferred the said lease to Fairdeal Forest Co. and whereas Ghulam Hussain on behalf of Fairdeal Forest Co. had taken loan from Feroze and Co. to work out the said lease, and whereas Haji Ghulam Nabi, Mohd. Yusuf, Ghulam Hassan and Mohd. Shafi parties to this agreement along with erstwhile partners for the partnership of the Feroze & Co. terminated on 31st December, 1960 and whereas by virtue of the credits these said parties held in the firm Feroze & Co. the loan advanced to Fairdeal Forest Co. has been transferred as an asset to the said parties in consideration of the loan taken from Feroze & Co. and whereas the said Ghulam Hussain has agreed to transfer the said lease with all its assets, liabilities stocks and all rights in favour of the said parties, and whereas the parties to this agreement have elected to carry on the working of the forest lease of compartment 27 in partnership....."

27.11. The net result of the above arrangement may be summed up thus. The firm of Feroze & Co. had advanced to Fairdeal Forest Co. Rs. 1 lakh. Ghulam Nabi took over this loan (though there is no recital in the award to this effect) and in consideration of his taking over this liability of Rs. 1 lakh, the lease of the Budnambal compartment together with the assets and liabilities was being transferred to Ghulam Nabi from 1st January, 1961 who formed the partnership with his sons to work out the lease or rather that which remained of it.

27.12. It is not clear whether the earlier partners had realised the value of the timber which they had cut and had transported, because it would be seen that out of about 3,37,000 cft. of timber which was stated to be in existence in the forest, they had cleared over 2 lakh cft. months before 31st December, 1960, but anyway Ghulam Nabi took over the obligation to repay Rs. 1 lakh to Feroze & Co, which was evidently adjusted in the books of Feroze & Co. which have not been produced in spite of a notice to do so.

27.13. Immediately Bakshi Ghulam Nabi became the sole proprietor of the firm of Fairdeal Forest Co. under the award and reconstituted it with his sons as partners, an application was made to the Chief

Conservator of Forests (C.C.F. for shortness) for remission of royalty. That is dated 7th January, 1961 and is Document 16. This is signed for and on behalf of Fairdeal Forest Co. by Ghulam Hassan, son of Bakshi Ghulam Nabi. Copies of it were submitted to the Minister of Forests, to the Conservator as well as to the Divisional Forest Officer. The grounds upon which the remission was prayed for are of some importance and I will, therefore, summarise them. The first was that the total sound volume of Deodar and Kail trees was only 2,89,000 cft. which would work out at Rs. 6.00 per cft. standing for Deodar. This, it was submitted, was the highest royalty rate ever agreed to by any lessee before, but though the firm was aware of this uneconomic rate, they started working in order to preserve the good name and reputation of the firm and invested Rs. 1 lakh in the operations. But then came the floods of July, 1959 in which "a major portion of our timber both from the transit as well as from the depots was washed away," adding, "the figures of our losses are already with the department." The third ground was that the timber in the forest was suffering from rot which, it was stated, was common to several forests in that area—a fact which, was said to be well-known to the Forest Department. Here again it was not stated which was the species which suffered from abnormal rot, nor was the percentage of rot given, though a very large number of trees had already been felled and converted into logs and marketed. As I have already pointed, there had been no complaint of rot by Fairdeal Forest Co. before this petition on 7th January, 1961 filed by Ghulam Nabi after he entered on the scene. The petition then went on to state that "owing to the incidence of rot a stage was reached when the lessees almost decided to abandon the lease writing off the money already invested as a loss." This is a rather curious statement seeing that up to 31st December, 1960 no complaint of any loss or of the firm ceasing to work was ever heard and there is no evidence of any decision to abandon the lease and Bakshi Ghulam Nabi having come on the scene only after 1st January, 1961, he is obviously not speaking of any decision of this nature after 1st January, 1961. The explanation for the firm not placing these facts before the authorities is also curious, and, therefore, I will set it out in its own words—

"On more than one occasion we decided to place facts in this regard before the authorities of the Forest Department and seek remedy. Being totally bereft of courage and power of decision by the repeated calamities from which we suffered in connection of this lease we dropped the idea every time. Finally notices were served by the department on us to exploit the lease or suffer consequences and we mustered up courage enough to approach your kind self and submit facts concerning this forest before you for such relief to us as you can grant us.

"We were simply in a dilemma ; if we gave up the lease, it meant loss and if we worked it, it meant our ruination plain and simple.... Considering the fantastic bid and the unsound quality of timber generally with the huge losses we have suffered due to floods, the lease is altogether unworkable.... In the light of these submissions we humbly request that the royalty of this lease may be reduced to such a reasonable level

as would enable the lease being worked at part. . . As regards the losses we have suffered on account of floods, we humbly pray due relief may kindly be given to us early'.

And lastly—

"The one year term of the lease under clause 11 of the agreement expired on 15th of the last month. . . . Usually extension of one season was due to us on account of the heavy floods. . . . Accordingly it is submitted that extension without payment of penalty in (a) clause 11 (i. e. for cutting) up to the end of December, 1962 and in (b) clause 12 (for removal of the timber) up to end of December 1963 may kindly be sanctioned in our favour early. . . ."

27.14. Immediately on receipt of this letter the Chief Conservator Mr. Firdous forwarded it to the Conservator of Forests with a covering demi-official letter addressed to him by name and marked confidential (vide Document 17 dated 7th January, 1961) giving his own views in the matter which were—

"The position depicted by the firm about the lease is very sad and reveals the background why the firm had given up working completely since April 1960."

The statement here that the working had completely stopped since April, 1960 is not borne out by the record and as a fact the files show that the firm was working fairly vigorously even after April, 1960, but to this I shall refer in its proper place. I am mentioning this merely for the purpose of showing that the Chief Conservator of Forests appears to have made up his mind to accede to the prayer of the firm even before any report had been received and the facts stated investigated. He directed the Conservator of Forests to arrange for an immediate inspection of the coupe along with Divisional Forest Officer, Langet and furnish a factual report on this lease case, and he added—

"In the meanwhile pending disposal of the representation of the firm, the work inside the forest need not be stopped."

This would be an indication that even then the work was going on and that the firm had not given up working.

27.15. The Conservator of Forests, when he received Document 17, directed the Divisional Forest Officer to get the Range Officer to inspect the coupe and submit a report. The communication to the Range Officer was sent on 13th January, 1961 and his report is Document 18 dated 16th February, 1961. In this report he stated—

"As soon as the coupe was sanctioned in favour of the said lessees and work order was issued, the firm took up the work in earnest zeal and *within few months' work and that too in slack season about half of the marked volume was felled and partly converted.* In the following spring a quantity of 32,622 cft.

logs deodar and 25,001 cft. kail were launched by the lessees but unfortunately unprecedented floods of July 1959 caught the said mahan.....and washed away about 75% of the stuff launched."

I shall have to examine the correctness of these figures yielding a loss of over 43,000 cft. which were apparently those given then by the firm, in some detail when dealing with flood loss which I shall take up last. As to the extent of the loss suffered, the Range Officer's report said—

"Taking into consideration the approximate volume of their loss.....it comes nearly to rupees two lacs."

Then as to the abnormal percentage of the rot, the Range Officer said that the coupe was inspected by him along with the Divisional Forest Officer and he gave the following stock position in the coupe :—

<i>Trees marked</i>	<i>Trees felled</i>
2081	1581
(This included both Deodar and Kail. The marking list shows only 2071 trees, but 10 more were marked after the lease was granted)	
<i>Trees converted</i>	<i>Trees felled but unconverted</i>
1331	250
<i>Stuff launched</i>	<i>Logs in forest and Launching Ghats</i>
Deodar 2492 logs/49675 cft.	
Kail 1809 logs/42691 cft.	3550 logs.

27.16. This meant that about three-fourth of the trees marked both fit and unfit had been felled and three-fifth converted into logs. The kail logs present in the forest were inspected and it was found that "about 30 to 35% of them were affected with ring rot and red rot starting from the pith which extended to the whole circle of the section." Also some of the stumps of felled trees even those marked fit "were seen bearing same signs.....as is tradition in this Range with regard to kail. This species is mostly affected with unsound outturn. On the whole the rot detected in the coupe is about 30-35% and the case deserves sympathetic consideration."

27.17. As regards the rot percentage which he worked out it will be seen that he has based it on the logs present in the forest which would include the stuff derived from trees marked unfit also and

not on stump checking which alone would show whether trees marked fit were or were not affected by rot. He only said that some of the stumps of felled trees bore signs of rot. The other point to be noticed is that though he had examined the stumps of both deodar and kail, and the logs present in the forest which he examined were obviously of both the species, he speaks only of rot in kail and not in deodar and it is in this connection that it is important to notice that in the tender notice itself the percentage of kail which gives details of the trees fit and unfit as seen earlier, 20 per cent of the kail trees have been marked as unfit, so that it is on that basis that the bid had been made.

27.18. Pausing here, I must refer to Document 20. Before the Range Officer proceeded to inspect the coupe to estimate the percentage of rot, the lessees submitted a list of the trees which they claimed had been marked fit, but which on felling turned out to be rotten, for examination. This list comprised only 63 trees. The numbers assigned to the trees in the marking list are set out in this list and from this it would appear that it covers trees from the different areas of the compartment, and is not confined to any particular spot. Out of the 63 trees which have been listed in Document 20, only five are deodar, and the rest 58 are kail. To this list the lessee added a note stating that "besides the 63 there were others of which a list had not by then been compiled", but this cannot be taken very seriously because the lessee had by then been working the forest for over 18 months and by the date of the preparation of this list—16th February, 1961—he had cut all but 500 trees out of the 2081 marked. It is further to be observed that even though liberty was reserved for filing a further list of trees which the lessee might find to be rotten, no such further lists were ever filed. It is possible that there were a few more, but I consider that in the face of these facts, their number could not be very large. Sixty of the 63 trees were examined by the Range Officer and he found that 32 of the 60 examined had rot but that 28 of them were fit (vide note at back of Document 19). He himself examined 22 stumps which he suspected to be affected by rot and has given a detailed description of the type of rot found in them. Some he said were serious and others not so serious. Of the 22 trees examined eight were among the list of 63 (Document 20) furnished by the lessee. As the list of the trees provided by the lessee (Document 20) included only 58 kail trees and the Range Officer has examined 60, it must be taken that he had examined Deodar trees as well, but found no rot in them.

27.19. The Divisional Forest Officer who inspected the coupes with the Range Officer sent his report on 16th February, 1961 (Document 21). He stated that although full inspection of the entire coupe could not be conducted because of snow, the observations made revealed that the plight of the lessee in working the coupe merits the consideration of the authorities. His first observation was that the bid was erratic and too high. Then he refers to the calamity of the floods by which a substantial quantity was washed away. Then as to the rot he stated —

"There is evidence of rot in a good portion of forest especially its upper reaches which is ill-drained and contains mostly kail."

As regards the felled trees lying in the forest his remark is that they were affected with rot, but as would be evident, these would include also trees marked unfit. Finally he suggested a remission of Rs. 2.5 to Rs. 3.5 lakhs in the royalty for sanction by the Government. This, of course, would include a flood loss of 20,000 cft. of deodar and 21,432 cft. in round form of kail to which, without making any reference to the details, he has referred as a factor which has caused loss to the lessee. It is unnecessary to consider at this stage the correctness of this estimate but it is sufficient to start with the basis that as a result of local inspection of the percentage of rot taken along with the 41,000 odd cft. of loss by floods of deodar and kail, the recommendation of the Divisional Forest Officer was for a remission of Rs. 2½ lakhs to Rs. 3½ lakhs.

27.20. When this report reached the Conservator, he summarised the report of the Divisional Forest Officer and submitted his own (Document 22 dated 21st February, 1961) to the Chief Conservator in a confidential letter addressed to him by name. In this summary the Conservator stated, after setting out the flood loss as estimated by the Divisional Forest Officer —

“There is evidence of rot in the good portion of the forest.... bearing kail mostly. The bulk of the crop is comprised of kail. The percentage of rot is estimated about 30 per centAll these factors make it clear that any lessee could get disheartened.....”

He, therefore, joined in the recommendation of the Divisional Forest Officer that a remission of Rs. 2.5 to Rs. 3.5 lakhs on the whole, *i. e.* including for loss by floods, may be considered for sanction by the Government.

27.21. On receipt of Document 22, the office of the Chief Conservator of Forests prepared a note (Document 23) for his perusal. The history of the lease was purported to be set out in this note and it was on these lines —

“As soon as the lease was sanctioned.....the lessees felled about half the marked volume and partly converted it too.. they launched 32,622 cft. of deodar and 25,001 cft. of kail, but unfortunately the unprecedented flood of July 1959 washed down about 75 per cent of the stuff *i. e.* 20589 cft. deodar and 21432 cft. kail.(When)they restarted work.....further trees felled were found with heavy incidence of rot.....”

This apparently meant that when the first half was felled and converted, the incidence of rot was not noticed. The note proceeds to record the joint inspection by the Divisional Forest Officer and the Range Officer and noted that the percentage of rot which was mostly in kail was about 30 per cent. They brought to the notice of the Chief Conservator that the Conservator had suggested a remission of Rs. 2.5 lakhs to Rs. 3.5 lakhs in the royalty.

27.22. The Personal Assistant to the Chief Conservator made a further note (1) that the flood loss was being separately considered and (2) that so far as rot was concerned remission could not be claimed as a matter of right and that as the officers had admittedly not made a thorough inspection of the entire compartment, the ascertainment of the exact amount of remission due to abnormal rot must await this thorough inspection. The Chief Conservator agreed with his Personal Assistant and said —

“I am not quite satisfied with the present report of the C. F. North Circle as it had not been possible for him to carry out a detailed and thorough inspection of the forest being under snow.”

27.23. The Chief Conservator thereafter proceeded to appoint a Committee in order to evolve a uniform policy as regards the basis upon which compensation should be given in cases where a claim was made on the ground of abnormal rot. In a memorandum which he prepared (Document 24 dated 10th May, 1961) he pointed out that in the sanctioned form of agreement there was a stipulation that no consideration would be given for trees found unsound or unfit, yet for a long time past rebates or remissions had been given in some cases while others were yet awaiting orders of Government. The Conservator of Forests of the area was, therefore, directed to inspect the forests with regard to these cases along with the respective Timber Utilisation Officer and the Divisional Forest Officer of the concerned Division. They were to examine, inter alia, the type and nature of the markings and make an accurate estimate of the rot percentage, determine the causes of the rot, decide whether this was abnormal or not and if abnormal, what percentage should be recommended for grant of relief. The list of the cases meriting consideration regarding losses claimed to have been sustained on account of abnormal rot etc. was appended to this memorandum and they comprised 14 leases and among them was the lease of 27-Budrambal with which this allegation is concerned as also of 9-Rajwar and 53 to 54ab of Kamraj Division dealt with in Allegation 31. This committee of three was directed to submit its report before the end of June, 1961.

27.24. The report, however, which is Document 25, was submitted only on 19th August, 1961. Though the Commission was directed to suggest the principles on which grant of remission should be ordered, in their report they enunciated no policy but what was submitted in document 25 was merely in the nature of an inspection report regarding the percentage of rot which they estimated in the compartments concerned in the several leases—there being independent reports in respect of each lease.

27.25. Learned Counsel^v for the Government subjected the report in regard to this lease to severe criticism, a great part of which seems to be justified. I have, therefore, to refer to the reasoning by which they arrived at their findings, though I might point out even at this stage, that the percentage of rot on the basis of which remission was finally granted far exceeded that which was found by this committee.

27.26. Paragraph 4 of the report dealt with the prevalence of rot in general terms. The Divisional Forest Officer who had inspected the compartment earlier had, it would be recollected, stated that the species which disclosed rot was mostly kail and with this the Conservator of Forests had agreed. In their present report, both the Conservator and Divisional Forest Officer being among its members, the description of them was also similar. They said, "The rot is more rampant in the case of kail than deodar." Later in the same paragraph in dealing with the rot they referred only to kail and said nothing about the type of rot which they found in deodar and in paragraph 5 where the reason for this rot is discussed, they referred by way of analogy to the case of what they termed comparable compartments 13(b) Drangyari and 2-D Ramhal. Pausing here, I might mention that their findings and recommendation, however, as regards these two compartments were not identical. In the case of 13(b) Drangyari, they found that abnormal rot was prevalent only in kail and recommended relief only in the case of that species. In the other compartment 2-D Ramhal, they found that rot was prevalent in both the species and their recommendation covered both deodar and kail.

27.27. In paragraph 6 they stated that there was nothing wrong in the markings which meant that the classification into fit and unfit was fairly done.

27.28. In paragraph 8 they specified the methods by which they had determined the rot percentage. There were three methods which they adopted and they arrived at their final figure by averaging the results obtained from these three methods. The first method consisted of an examination of the total stocks in the forest as seen by them. Under the head "stocks in the forests" were included those (1) in the forest itself and (2) stocks at the launching ghat. The total volume of deodar stocks in the forest was computed at 22,500 cft. and at the launching ghat 18,800 cft., making a total of 41,300 cft. As regards kail, the stocks in the forests were assessed at 36,000 cft. and at the launching ghat 53,600 cft. making a total of 89,900 cft. It would be seen that the volume of kail is over twice the volume of deodar, but yet the total of these two volumes amounting to 1,31,000 cft. was taken as the basis for the ascertainment of rot. Out of this 1,31,000 cft. they found that 53,000 cft. was unsound and the percentage of unsoundness was worked out at 40%. I should here mention that the value of deodar is about twice that of kail and adding up deodar and kail in this manner was calculated to inflate the loss which they were computing as having been suffered by the lessee. Besides, the converted logs would have included the stuff not merely from trees which were marked fit, but also those marked unfit, but they made no allowance for this. It would be recollected that 20% of the volume of kail had been of trees marked unfit.

27.29. The second method which they adopted was to calculate the percentage of unsound stuff at the depot at Doabgah, as well as at other depots and at the saw mill. The unsound stuff at these points was found to be 22,429 cft. Here again, they did not determine the proportion of kail and deodar at each place separately. They worked out the percentage which the unsound stuff at all these points taken together

bore to the total releases up to that date which were 1,27,500 cft. If they had worked it out on that basis, it would have yielded a figure of about 18%, but they made an allowance for the quantity of the stuff—near about 42,000 cft. which they said had been washed away during the floods and after deducting this 42,000 cft. from the total releases they worked out the percentage as 26% of the rot on the balance quantity of releases. I shall be dealing later with the evidence regarding the actual volume of timber which is shown to have been washed away, but meanwhile, it might be pointed out that the Commission did not calculate the volume of the sound timber at the depots, for that would have given some more accurate figure for estimating the loss of sound and unsound timber by flood. Without an examination of the proportion of sound and unsound timber washed away, the deduction they made for floods loss would not yield any proper result for the purpose on hand.

27.30. The third method they adopted was by checking of the rot present in the trees by examination of random samples of stumps of trees marked fit. In this random checking they claim to have examined 46 trees whose identifying numbers are given in an annexure to the report. From the tree numbers it would appear that the inspection was not in all areas but in some only, for the tree numbers are mostly in four digits. Of the total number of trees examined by them 15 were deodar and 31 kail. Of the deodar trees which they selected 13 were found to be partly rotten and two to be fit, while among the kail trees 29 were found to be rotten and two to be fit. They computed that out of the volume of deodar 2765 cft., 1556 cft. was unsound. Similarly in the case of kail out of 6037 cft. 3728 cft. were unsound and thus on the "random checking" they arrived at a rot percentage of 56% for deodar and 61% for kail which gave an average of 58% on the whole. It is difficult to see how this was a cross-checking of the first two methods since in those, particularly in the first, they state they had examined the entirety of the stock in the forest and at the launching ghat. Learned counsel for the Government appear to me to be well-founded in their submission that this method was adopted merely to increase the percentage.

27.31. The respondent in this reply has laid great stress on the correctness of the result yielded by the random checking method, and his submission in fact is that this was the only reliable method. I shall deal with the theory underlying it later, but the correctness of the result, it must be conceded, depends on the samples being taken at random and such as to represent a fair average. I am not, however, satisfied that the selection of the trees by the Commission was really at "random".

27.32. An examination of the sample stumps inspected by the Commission gives me the impression that the samples were not chosen at random but deliberately. This is rather a serious charge to make and I am, therefore, giving my reasons in detail for saying so. The commission claimed to have examined 46 trees as seen from their analysis on the second sheet of their annexure. They do not appear to have chosen these at random, for 25 of these are among those numbered 1347

to 1601. Now it is found that the distribution of unfit trees in this compartment is not even over the entire compartment and though the total number of unfit trees in the entire compartment of 2071 trees in 259, i.e. being 12%, between the trees bearing the identifying numbers 1347 to 1601, i.e. in a total of 254 trees 52 are unfit, thus disclosing a percentage of unfit trees of 20%.

27.33. Next we have the circumstance that several of the trees which have been selected for examination are those against which are noted in the field book containing the marking list remarks regarding some feature of abnormality. Against 1811 as well as against 1561 and 1194 is a note that the base was abnormal; against 1491, 1550, 872 that the base was burnt; against 1467, 1565, 1365, 1355 that the base was scooped; against 1460 which was actually marked unfit is a note that the base was scooped and rotten; against 1306 that it had been struck by lightning. Thus, 12 of the 46 trees selected "at random" are seen to have been those which presented abnormal features indicating possible unfitness and one of them No. 1460 had actually been marked unfit. But this does not exhaust what I have to say about the method adopted for selecting the trees at "random". Even in the selection of these trees an attempt appears to have been made to select trees next to those which were marked unfit. Thus, No. 1820 and No. 1821 are among those selected. No. 1818 and No. 1819 as well as 1822 and 1823 have been marked as unfit for the reason that 1818 had a fungus disease "*Trametes Pini*" and the other three were "hollow at the base which was rotten" and were, therefore, marked unfit. Similarly 1491, 1942 and 1493 as well as 1495 and 1496 have been selected, the tree in the middle 1494 has been marked unfit because the base was scooped and was rotten. No. 1558 has been selected, No. 1557 next to it is unfit. Nos. 1547, 1548, 1550 and 1551 have been selected and we find that 1543, 1544, 1545 and 1546—all of them are marked unfit because their base was rotten and 1544 was "dying". No. 1365 has been selected and 1364 has been marked unfit because the base was scooped and had been struck by lightning and I have already stated 1365 also had its base scooped. No. 890 has been chosen, and we find 891 has been marked unfit as the base was rotten. No. 1361 has been selected and 1360 is marked unfit because its base was rotten. No. 1357 has been selected while 1356 has been marked as unfit because the base was rotten. No. 1324 has been selected while 1325 has been marked unfit because it was affected by fungus disease and the base was rotten. No. 738 is one of the trees selected whereas 737 is a fallen not a standing tree. No. 811 has been selected while 810 is marked unfit because its top was dry and the base was scooped. No. 950 & No. 953 have been chosen while 952, 955 and 956 have been marked unfit because in the case of the first and in the last there was fungus disease and in the case of the others the base was rotten besides the top having been burnt. Nos. 804, 806 and 809 have been selected when 810 has been marked unfit because the base was scooped and the top was dry. As admittedly rot has to do with the nature of the soil and the climatic conditions or infection from fungi present, it stands to reason that where a tree or a group of trees are infected by disease or where the nature of the soil is such that rot develops, the likelihood of such a rot being present in the trees next to them is more, than in cases where the tree is at a distant from the unfit trees. There are large groups of trees in

the marking list in which the unfit trees are distantly spaced. Trees have not been selected from those areas, but the details I have given earlier appear to indicate that a conscious effort has been made to select those trees marked fit which might show some traces of unfitness or rot. These are the reasons why I do not consider that the selection, of the stumps for checking has not been quite at "random."

27.34. The Commission averaged the three percentages which they had arrived at by the three methods which they had adopted and reached the figure of 41.3%. As the stuff taken into account in the computation of the first two methods obviously included logs from trees marked unfit, as a general rule, about 15% was normally allowed as a deduction to arrive at the "correct" percentage of rot in trees marked fit. The Commission did not make this deduction and the reason why they did not do so is to be found in a note which makes rather curious reading. They said—

"The Commission has given no allowance for unfit stuff marked in the area because there are still 225 trees either standing or felled but lying unconverted in the forest volume whereof has not been included in the figures quoted above."

As I have pointed out earlier, the volume of unfit trees marked was as high as 20% in the case of kail. The total number of trees marked was 2071 (10 were added subsequently making the total 2081) and of them all but 225 trees had either not been cut, or cut but lying unconverted. The reasoning for not taking into account the unfit stuff marked in the area because 225 trees were still standing or were unconverted does not proceed on any logic or principle. They do not even care to say whether these 225 are those which are marked fit or unfit, whether they are deodar or kail. If nothing is known about them, the normal presumption would be that they conform in their rot percentage to the rest of the compartment. If so, their existence would be no reason for not making the usual allowance for the trees marked unfit. I, therefore, agree with the learned counsel for the Government when they suggested that the failure to allow the usual percentage for trees marked unfit was merely to retain the figure of rot percentage which they had arrived. Besides the uncut or unconverted trees constituted but 11% of the total number of trees, whereas having regard to the percentage of trees marked unfit which were mostly kail, the percentage allowed should have been 20%. I might add that in the case of the other leases which the Commission dealt with, allowance is made for the percentage of trees marked unfit in the original marking. But, anyway, the Commission arrived at 41.3% as the rot percentage and recommended this for consideration. More, however, was to follow.

27.35. When this report was received by the Chief Conservator, it was commented upon by his office which prepared a note for his perusal. It was there pointed out that the rate of royalty bid by the tenderer was very high and that this was aggravated by the percentage of rot which was reckoned at about 40 per cent. It was, therefore, proposed that the royalty be re-worked at Rs. 4.00 per cft. standing for deodar and Rs. 2.00 per cft. standing for kail. It was further pointed out that there

had been a further set-back caused by the floods of July, 1959, but as the question of flood loss was being considered separately, it was not being taken into account in this note. The Chief Conservator accepted this note and on the basis of the figures of royalty which he was prepared to consider were reasonable *viz.* Rs. 4.00 per cft. for deodar standing, he suggested that the original royalty figure of Rs. 12,51,000 should be cut down to Rs. 9,10,000 and on this reduced royalty of Rs. 9,10,000 a further 10 per cent, *i. e.* Rs. 91,000 should be allowed as remission for the abnormal rot. This would have meant a total reduction in the royalty of Rs. 4,32,000 besides flood loss compared to the figure of 2½ lakhs to Rs. 3½ lakhs including floods loss which was originally considered reasonable by the Conservator of Forests in his report (Document 22). Document 26 is the original manuscript report of the Chief Conservator of Forests written in his own hand. In the concluding portion of this report he said —

“A report.....formulated by the Commission of officers who conducted the inspection of this coupe among others is enclosed herewith in copy. This provides full details of the rot detected percentage whereof has been reckoned at 40 per cent”.

In a later paragraph he wrote, again in his own hand—

“From the above it follows that the reasonable royalty in this case should have been in the neighbourhood of Rs. 9,10,000 (it was originally written as 9 lakhs but later corrected into 9,10,000) particularly in view of difficult working and locality factors and that too if the volume marked turned out to be fit and sound. Unfortunately this is not the case, as there is a heavy incidence of rot of 40% in the volume marked fit as reported by the Commission. This is sure to leave a big gap even after reduction of royalty to Rs. 9,10,000 (Here again Rs. 9,00,000 is altered into Rs. 9,10,000). Accordingly I recommend a reduction of 10% in the reduced royalty. This in other words will mean a total reduction of Rs. 4,32,000 (this figure was originally written as 4,22,000) in the original royalty of Rs. 12,51,000/-.”

This note was thereafter typed for being forwarded to the Government (Document 27). In the first portion dealing with the report of the Commission the typed words were—

“This provides full details of the rot detected the average percentage whereof has been reckoned at 58% on the whole.”

(It was originally typed as 40% but corrected in manuscript to 58% with the addition of the words “on the whole”).

The figure in the other paragraph was brought into line with the above corrections, the relevant words becoming—

“Unfortunately this is not the case, as there is a heavy incidence of rot to the extent of 58.3% on the whole as reported by the Commission.”

Here again 58.3% is a manuscript correction of typed matter which was originally 41.3% and at the end there is a reference again to 58.3% also a correction from 41.3% and finally the relief recommended is in these words—

“It is a pretty bad case and I am of the opinion that a minimum relief to the tune of 4.76 lakhs may kindly be considered in this case.”

It will thus be seen that to the Rs. 4.32 lakhs which he had written in the manuscript (Document 26) he had added another Rs. 44,000 as the relief to be recommended when correcting the typed script (Document 27). I might point out that document 27 from which I have quoted the above extracts was intended to be part of a single report of 43 pages covering all the cases referred to the Commission and occurs at page 31. This page 31 alone with its manuscript corrections was again retyped, thus eliminating all traces of having been corrected. It will be seen that in page 31, as is found in Document 27 which as pointed out was really a second draft, Mr. Firdous had increased the relief to be granted to Rs. 4.76 lakhs. Evidently he felt or, according to the Government case, was made to feel by the respondent, that even this relief was not sufficient. He, therefore, added another page of which the manuscript matter is Document 28 and is page 31A in the final fair type (Document 29). Here he referred to the lessees having to be persuaded by himself to carry on with the working of the lease on the definite assurance that the Department would do its best to make this lease workable—things about which there is nothing in the files, which do not find place in the previous drafts, and which he obviously invented for the purpose of serving as an argument for what followed. It would in this connection be recollected that even according to the lessees in their letter dated 7th January, 1961 (Document 16) they had made no complaint during 1960 and as an explanation for this they stated that they could not summon courage to do so—a courage, however, which they gathered when Ghulam Nabi became sole proprietor. Mr. Firdous added—

“Keeping in view this background of this unfortunate lease I strongly recommend that a further minimum relief of 25 per cent in the normal royalty of the lease reckoned at 9.10 lakhs may kindly be sanctioned. This will amount to a total reduction of Rs. 5.68 lakhs in the original royalty of 12.51 lakhs.”

Thus, another Rs. 1 lakh or more was added to the relief which he had originally suggested.

27.36. That these two pages 31 and 31A were later additions after the entire report was got ready is clear from the circumstance that this report which contains 43 pages is typed with a pale red ribbon throughout its length except these two pages 31 and 31A which underwent the alterations to which I have referred and these are typed with a fresh black ribbon which is used thereafter only for the last paragraph on page 43 which refers to the report being forwarded to Government.

27.37. It is the case of the Government that Mr. Firdous was sent for by the respondent and was directed to increase the amount of relief to be recommended to the lessees and in support of it reliance was placed on the affidavit of Mr. Firdous. In view, however, of Mr. Firdous not being called as a witness I have not been able to act on the statement in his affidavit though it must be said that Mr. Firdous died before the last stage of the inquiry when alone he could have been produced for examination. Learned counsel, however, strongly relied on the evidence afforded by Documents 26, 27 and 28 and 29 for the purpose of showing that the statement in the affidavit of Mr. Firdous was corroborated by documents whose genuineness is not impeached. The manuscript drafts as well as the first draft have been preserved in the files of the Chief Conservator of Forest's office and have been made available to the Commission. As an invariable rule I have not accepted or acted on statements in affidavits filed on behalf of either party, but in this case I find there is irrefutable corroboration of unimpeachable documentary evidence of his statement. There is no possible explanation for Mr. Firdous in stating falsely in Document 27 that the Commission of Officers had computed the rot percentage as 58.3 particularly as the manuscript shows that he was aware of the fact that they computed the figure at 41.3 per cent. I cannot conceive of any reason either why he should exaggerate the percentage unless he was induced to do so either by the lessee or by someone interested in the lessee. Though, therefore, I do not accept the statement with all its details of Mr. Firdous whose conduct appears to be thoroughly reprehensible notwithstanding the high office that he held, I do not entertain any doubt that his report was framed improperly at the instance of someone interested in the lessee. As the lessee himself could not have had such influence or authority to induce an officer of his rank to make such a false report, I am left with no alternative but to hold that it must have been the respondent at whose instance these changes were effected in the report.

27.38. Before concluding I might mention one further circumstance which appears to me further to support the inference I have drawn. The three-member Commission appointed by the Chief Conservator submitted a number of separate reports (including four which were sent to it after its constitution) one in respect of each lease, containing its findings and recommendations. There were 18 such cases (including four which were sent to it after its constitution) in which the Commission submitted its report. The Chief Conservator after considering these reports sent up a consolidated memorandum dealing with each one of these cases. That is the 43-page document to which I have referred (File No. COF 22-Vol.II of the CCF). In making his recommendations

he made several changes in the amount of relief suggested by the Commission and except in this case and in the case of one of the other leases of Haji Ghulam Nabi Haji Noor-ud-Din, though he accepted the findings of the Commission as regards the rot percentage, his actual recommendation as regards the amount of relief to be given to the lessees always worked to a lesser figure than had been recommended by the Commission, so that it is really not any case of the Chief Conservator being over-sympathetic to every lessee. I have set down in a tabulated form the 18 cases covered by the report of the Commission, pointing out their recommendation and in parallel columns the recommendation and the variation made by the Chief Conservator. In this statement I have indicated briefly the basis on which the rot percentage was determined by the Commission of officers, in view of the defence of the respondent that the Commission of officers adopted a uniform policy of affording relief to all the affected lessees, and that Ghulam Nabi was not singled out for specially favourable treatment.

S.No.	Compartment No.	Name of the lessee.	Amount of Royalty	Recommendation of the Commission	Chief Conservator of Forest's Recommendation
1	2	3	4	5	6
			(Rs.)		
1.	(53(a), 53(b), 54(a) & (b) South Lolab.	Ghulam Nabi Haji Noor-ud-Din	20,11,000	A remission of 40 % of the total royalty—(Rs. 8,44,000)	Remission of Rs. 8,51,000 in royalty.
2.	51, 52, 53 etc. South Lolab.	Abdul Samad Pandit	28,47,000	Remission of 40 % of the total royalty—(11,38,400). (No random sampling. Whole converted material listed and classified into sound and unsound. Though deodar prevailing species—4,50,000 cft. against 18,000 cft. kail and 17,000 cft. fir and rot was 53 % in deodar, 26 % in kail and 40 % in fir, averaged to 39.6 %)	Remission of Rs. 9,27,000 in royalty.
3.	10—North Lolab	Mohd. Ahsan Wani	18,51,000	Remission of 40 % of the total royalty—(Rs. 7,40,400). (Percentage of rot based on actual unsound volume, checked with outturn at launching ghat and	Remission of Rs. 4,60,000 in royalty.

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|---|---------------|---|--|
| 4. 86-North Lolab Kashmir Timber Corporation, Sopore. | Rs. 11,47,000 | Doabgah, cross-checked with outturn and further checks on unsound volume removed by the firm. Final average 40%). | Remission of 15% in royalty. |
| 5. 74-Naihari Ghulam Mohiudin Bachha | Rs. 13,21,000 | Remission of 33% of the total royalty.
(Mainly deodar coupe. Kail left out of account. Complete list of stumps examined. Examination of trees marked fit which on felling turned out unsound yielded 44%. Reduced by 11% because of percentage of unfit trees marked). | Agreed with Divisional Forest Officer who had fixed the rot percentage at 25% and himself recommended a remission of 15%, the Commission has given reasons for disagreeing with the Divisional Forest Officer. |
| 6. 28-Mawar International Forest Co. | Rs. 25,55,555 | Reached an average of 71% of rot on the whole and deducting 14% on account of stuff marked unfit, the final figure worked out was | While expressing his complete agreement with the finding, recom- |

1	2	3	4	5	6
				57%. On ground of safety they recommended 50% for the allowance of rot.	mended 35% reduction in the original royalty, i. e. Rs. 8,90,000.
				(Total volume converted and released compared to unsound volume at various spots which yielded 57%. Random checking no doubt yielded 85% but after averaging it to 71%, 14% was deducted on account of unfit trees, reduced it to 57% and finally to 50%).	
7. 9-Rajwar	Ghulam Nabi	Rs. 22,61,000	Remission of 40% in royalty.		Remission of 30% in royalty— Rs. 6,78,300.
8. 13(b)-Drangyari	Shahdad Forest Co.	Rs. 12,66,000	After examination of the trees recommended that in case of kail 1st class marked trees rot was 90%, in the 2nd class 75% and in the 3rd class 30%. Working out an average they arrived at 46.5% and to guard against over-estimation, deducted 11% on account of	After noting the Commission's recommendation of 35% recommended 15% which meant a reduction in the royalty of Rs. 90,000.	

unfit volume and recommended 35% on the whole. (Total releases were compared with the unsound stuff. No random sampling. Standing trees were examined. Some were felled for inspection. Though in the first class the rot percentage was 90% and in the second class 75%, it was reduced to 70% by averaging it with third class. Finally with other figures an average of 46.5% was reached and after deducting 11% for unfit marking, 35% was finally arrived at).

9. 2-D Ramhal	Abdul Ahad	14,91,591	Found rot at 56%, making an allowance for unfit volume of 16%, worked out the percentage as 40. (Unsound stuff in forest, depot, Doabgah etc. computed against the total volume marked fit at 56%. After deducting 16% for unfit marking, finally allowed 40% No random sampling).	After noting the recommendation of the Commission recommended a remission of 20% in the royalty.
10. 29, 30-Hamal	Tirath Ram & Bros.	8,00,000	A lease of 1954. The lessees had made repeated representations about abnormal rot but no relief was granted. After the Commission was set up under the orders of the Chief Conservator of Fo-	Pointed out that this complaint was similar to 9-D and 10-C Ramhal where the extent of rot was found

1	2	3	4	5	6
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(Rs.)

rests dated 10th May, 1961 (Document 24), the lessees made a representation to the Prime Minister that their lease also might be examined by the Commission. The representation of the lessees was forwarded by the Chief Conservator to the Conservator for a report. The Conservator in his report concluded that the lessees had suffered a loss of 41 % of the total fit volume marked.

to be over 60 % and Government had granted a remission of 45 %, and applying the same tests, he recommended a reduction of 20 % in the royalty.

(Based upon shortfall in outturn attributable to presence of rot, estimated 41 % of the total fit volume marked. Besides their loss figures were worked out).

11. 121, 122-
Kuihama.

Mohd. Shaban Mattoo.

6,75,161

Found that marking was very defective and trees which were wholly unfit were classified as fit but it stated that the Marking Officer was an inexperienced person and, therefore, he could not be

While agreeing with the Commission said—
“I can ill-afford to endorse the commendation of

blamed. The Commission considered that remission should be granted on the basis of 40% rot. (Marking unsatisfactory. Percentage was based on conversion volume of the outturn. Random checking not taken into account, though it was done.

the Commission in toto as 10% to 15% of the rot or even more is a common feature in fir forests." He therefore recommended 15% as a special case.

13. 56, 57 etc.
Ramban.

D. S. Bist & Sons

10,35,000

After pointing out that marking was defective, recommended that 20% relief might be allowed for rot.

(Marking stated to be unfair, trees whose base was rotten, or were mature and over-mature were classified as fit. Out of 10 lakh cft. marked, 2 lakh cft. completely or partially unfit. 20% recommended and this after examination of each compartment and their total volume. Almost every stump was examined).

Rejected the report of the Commission and considered that the report was not thorough and till a thorough examination was done he would not make any definite recommendation for relief.

14. Marwa lease of
Badwan.

Ahad Associates

4,13,777

The recommendation was (1) that the lessees be given 274 trees marked in exchange for the same number of trees which were in an inaccessible spot, and (2) that after deducting the above volume for 274 trees, the lessees be given 30%

After referring to the recommendation of the Commission, himself recommended a rebate of 15% after making an al-

(Rs.)

15. 16 and 18(a) Batote.	Jammu Forest Co.	9,21,777	to compensate the loss suffered on account of rot. (Six hundred trees which had been felled, were examined and 19 more were felled at different places for observation). Did not record any finding as regards percentage of rot but computed the loss sustained by the firm at over Rs. 2½ lakhs which they said had been verified by the Divisional Forest Officer. They recommended that the Government might come to the rescue of the firm, evidently meaning the amount of loss might be deducted from royalty. (In the tender notice they were promised that a skyline crane would be installed for removal of felled timber. The firm cut the trees and had them ready, but could not transport it in time, because no crane was fixed up. Total loss sustained was Rs. 2½ lakhs as determined by Department. Relief recommended was Rs. 36,000 being the balance of royalty due).	lowance for 274 trees to be given in exchange. Pointed out that out of the total royalty stipulated the lessees had already paid Rs. 6,63,000 odd. The Department had in their hands security deposit and other credits of the lessee. If these were adjusted it would still leave Rs. 2,41,347 due from the lessees as royalty. Suggested that this sum might be written off.
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1	2	3	4	5	6
			(Rs.)		
16.	17(a) etc. Jai and Chiralla, Bha- darwah Division.	D.S. Bist & Sons	46,25,000 (Jai) 62,60,000 (Chiralla)	Recommended that an unfit volume of 87,712 cft. plus 56,759 cft. deodar; 21,783 cft. plus 27,740 cft. kail, and 3,92,171 cft. plus 1,65,418 cft. fir, was deducted in the two forests and that an equal volume might be granted in their favour in exchange or a proportionate reduction ordered in royalty representing the above volume. (The firm supplied a long list of fit trees which on felling were found rotten. All these were checked and were found substantially correct. Out of a fit volume of 2 lakhs odd. cft., 15,000 cft. found rotten. Percentage 23.4. Similarly for Chiralla lease, where it was worked out at 14.1%. The list of the number of trees examined occupied about 60 pages of the file)	Disagreed with this type of relief which he considered excessive and suggested reduction in royalty by 20%.
17.	44, 45 etc. Batote.	Gani Joo Ahsan Joo	18,11,111	Considered the marking as very defective. There were five compartments comprised in this lease. The percentage of rot in each was worked out separately but the lease being single they recommended 30% of rot which was avera-	After referring to the report and the finding as to 30% of the Commission, suggested that 20% would be a fair relief.

ged for being taken into account for calculating the rebate.

(Compartment subjected to heavy fire about 40 years back. 522 trees were examined out of which 173 were found unfit in compartment 44. Similar examinations in other compartments. Percentage of rot worked out for each compartment separately but recommendation was 30%, being the average. The number of trees examined covers over 20 pages of the file).

18. 10(a) and
11-Marmat.

Chanderbaga Forest Co. Rs. 23,30,230

Estimated that owing to excessive rot the lessee had suffered a loss of Rs. 7,10,000. They recommended that either the damaged volume be marked and handed over to the firm or proportionate reduction in the royalty might be granted. 260 of the trees marked were at inaccessible heights (52,290 cft. of deodar). 10,381 cft. deodar marked fit proved to be unfit. Because of difficulty of verification, 50% of this was admitted. 65 trees were missing, accounting for 2000 cft. There was also loss by rains, which is estimated at over 83,000 cft.

Recommended a rebate of 10% on the original royalty or Rs. 2.33 lakhs as a measure of justifiable relief, though he says that the minimum loss the lessees would suffer having regard to its terms etc. would be Rs. 7 lakhs.

(It will be noticed that there were two other cases of leases in favour of Messrs Ghulam Nabi Haji Noor-ud-Din, the grant of relief in which is the subject-matter of Allegation 31 and I shall deal with the details of the recommendations by the Chief Conservator and the subsequent history as regards the relief granted in those cases when dealing with the other allegation).

27.39. This report of the Chief Conservator (Document 29) which included the retyped pages 31 and 31A was forwarded to the Government and was the subject of consideration by Mr. Nag who was Secretary to Government in the Forest and Housing Department as regards whom I shall have to say something later. His note on the Chief Conservator's recommendation is Document 30. In the first place he disagreed with the Chief Conservator in suggesting that the royalty must be slashed down in cases where the bids were considered to be uneconomically high. Mr. Nag pointed out that if that was done it would encourage lessees to irrationally raise their bids at the time of tender in the hope of obtaining remission later. By the way, I would add that from the way in which the bids in the three leases with which Allegations 29 and 31 are concerned were made, it looks as if Ghulam Nabi made the tenders, not merely in the hope but confident that he would obtain remission. I am saying this because, it is found that in regard to the lease of compartment 9-Rajwar, the lease was sanctioned and the work order issued on the 20th November, 1958 and on the 31st December, 1958, he filed a petition for remission of royalty, on the ground *inter alia* of his bid being too high in the light of the timber in the forest and ultimately got a remission of Rs. 7,02,000 out of a total royalty of Rs. 22,61,000.

27.40. Mr. Nag next dealt with each of the cases recommended and generally agree with the total amount of relief which the Chief Conservator had recommended for being granted. Dealing with the case of 27-Budnambal with which we are now concerned, he accepted the statement of the Chief Conservator that the Commission had estimated the rot at 58%. He then repeated what the Chief Conservator had stated at page 31A about his having prevailed upon the lessee to carry on the working of the lease on the assurance that the Department would consider his claim for remission—a statement for which there was absolutely no basis in the record—and concluded by stating that on the basis of the Chief Conservator's recommendations the lessee would obtain a total relief of 5.68 lakhs. But evidently Mr. Nag was not satisfied with this recommendation and though the Chief Conservator had taken into account the "high royalty" which had been bid by the lessee in "slashing down the royalty and re-fixing it at Rs. 9.10 lakhs", Mr. Nag considered that a further relief was due for the high royalty bid and, therefore, suggested a relief of Rs. 6 lakhs on account of the abnormally high incidence of rot. I might point out that in the case of the lease of Jai and Chiralla (item 16 in the above tabulated list), though the Chief Conservator has recommended a reduction of Rs. 8.92 lakhs and Rs. 17.60 lakhs out of lumpsum royalties of Rs. 46,25,000 and Rs. 62,60,000 respectively on account of both the factors, namely, high bids and abnormal rot, Mr. Nag suggested that Government might grant a relief of only Rs. 8,92,000 and Rs. 2,49,600 respectively on account of rot.

27.41. Thus the error deliberately committed by the Chief Conservator as regards the percentage of rot estimated by the Commission was repeated by Mr. Nag when he stated that the average rot as estimated by the Commission was 58% and it was on this basis—which he obviously must have known to be wrong because he has referred in detail to the figures given by the Commission—that he too adopted the rot as 58% and recommended relief on that basis. I should, however, point out that evidently this amount of relief appears to have shocked even Mr. Nag at that stage, for he made a reduction of 10% on account of “normal rot” from the 58% and the sum of Rs. 6 lakhs was worked out on the basis of relief at 48%. I say “at that stage” designedly because at a later stage, in March, 1963, as I shall be showing, he felt no qualms to unauthorisidely increasing the amount of relief from Rs. 5,80,000 to Rs. 7,35,000 which works out to just 58%. In other words, though Mr. Nag was aware of the two other methods which the Commission had adopted to determine the volume of unsound stuff and had averaged the three methods, he took into account only the random checking method which yielded the highest figure and treated it as the figure arrived at by the Commission which in view of the details which he has given, appears to be deliberately intended to assist the lessee.

27.42. The matter then went to the Finance Department for its comments and the recommendation in regard to these leases is in Secretariat File M-I, the relevant page of which has been marked as Document 31. The Finance Department analysed the 18 cases and put up seven of them in one category, 27-Budnambal being in these seven (as also 53b and 54ab South Lolab). They considered that a maximum of 80% of the loss as estimated by the Committee constituted by the Forest Department might be granted in these seven cases. The amount of relief in each individual case was directed to be worked out keeping in view the percentage of rot and the rates offered and after assuming that relief to the extent of 80% was justified where the rot has been estimated to be 40% and the offer made for deodar happens to be Rs. 5.52 per cft. or over. On this basis they recommended that the relief which the lessee of lease 27—Budnambal might be afforded was 46.40%. This was on the footing that the percentage of rot estimated by the Commission was 58%. It will be noticed that this figure was taken from the note of Mr. Nag on which the Finance Department proceeded. In a note which was added to the working sheet the Finance Department added, that in the case of Buhnambal the principle they had enunciated would work at a higher figure but they had restricted it to 46.40% in view of the relief being restricted to 80% of the percentage assessed by the committee.

27.43. In the case of Jai and Chiralla it might be pointed out that as against 23.4% recommended by the Commission for Chiralla lease, 11.90% was recommended by the Finance Department and in regard to Jai, as against 14%, 3.89%. This note by the Finance Department received the approval of the Finance Secretary as well as of Mr. G. L. Dogra, Finance Minister on 28th January, 1962.

27.44. After this recommendation was received from the Finance Department, Mr. Nag, the Secretary in the Forest Department prepared a memorandum for being placed before the Cabinet. In this memorandum

random (Document 32) he divided the 18 cases which were considered by the committee under four categories—

- (a) Six cases where there was high percentage of rot as well as high, uneconomical and uncommercial bids.
- (b) Ten cases for grant of remission on account of rot only.
- (c) One case of high and erratic bid and failure on the part of the Department in arranging a crane for the carriage of timber.
- (d) One case of defective marking and loss due to rolling down of timber over rocks.

Dealing with the lease of compartment 27-Bundnambal, he repeated what he had stated in his note to the Finance Department about the Commission having found rot at 58% and his previous recommendation that relief to the extent of 48% may be given in consideration of the incidence of rot and the high royalty. On page 15 he set out the recommendations of the Finance Department by which in the case of this lease they had suggested a remission of 46.40% of the royalty. In view of this he stated that the Forest Department agreed with the Finance Department and, therefore, suggested a remission of Rs. 5.80 lakhs in the case of this lease (vide page 16) which works out to 46.40%.

27.45. This memorandum was submitted to the Council of Ministers on the 1st February, 1963. It was considered by the Cabinet at a meeting held on the 9th February, 1963 when the Forest Minister Mr. Dinanath Mahajan introduced this case. The minutes of the Cabinet meeting is Document 33. The decision taken was that the remission recommended may be taken into account in calculating the arrears of royalty due from the lessees and that if the lessees paid at least 50% of such net balance immediately or by the end of March, 1963, they should be informed that they would get rebate on account of rot as calculated by the Department and agreed to by the Finance Department. In other words, there was to be no immediate rebate in the royalty but on the other hand the grant of the amount of rebate decided upon was made conditional on the lessees paying up at least one-half of the balance before the end of the financial year. The resolution of the Cabinet was marked 'secret' by the Forest Minister Mr. Mahajan and was forwarded to the Forest Secretary by name. On receipt of these proceedings the Forest Secretary Mr. Nag addressed a communication marked 'secret' to the Chief Conservator of Forests by name on the same day—9th February, 1963 (Document 34). After recalling "the instructions given by the Forest Minister that morning" regarding the preparation of a statement showing the amount of royalty due and payable by each lessee, he stated—

"You may also take further necessary action in this behalf as directed by the Hon'ble Prime Minister this morning so that the Lessees could deposit the necessary amounts by 31st March this year."

And then followed a list of 12 lessees in which item No. 5 was Fairdeal Forest Co. and Rs. 5,80,000 the amount of relief to which they were to be entitled. This amount as also the amount of relief to be afforded to the several other lessees is stated to be provisional but in the context of the Council resolution this could only mean that the relief was conditional upon the payment of 50% of the royalty before the 31st March, 1963. I should add that items 2 and 9 in this list, relate to the firm of Ghulam Nabi Haji Noor-ud-Din and the statement set out the amount of relief to be afforded to their two leases of 53b, 54ab South Lolab and 9-Rajwar respectively which was Rs. 6,43,000 and Rs. 7,02,000. These relate to Allegation 31 and will be dealt with after I complete the examination of the lease 27-Budnambal.

27.46. The only matter to which it is necessary to advert at this stage is, that in this communication the figure of relief to be afforded to Fairdeal Forest Co. in respect of the Budnambal lease is the same as was recommended by the Finance Department and which was suggested in the Memorandum to the Cabinet by Mr. Nag himself in Document 32 and which was accepted by the Cabinet on 9th February, 1963. This was followed by a further letter from Mr. Nag to the Chief Conservator of Forests on 12th February, 1963 marked "confidential" and addressed to him demi-officially (vide Secretariat File CON/ST/63—Page 15). After referring to the earlier letter, Mr. Nag said—

"I am directed to convey the general directive by the Cabinet that the amount of rebate/relief agreed to by the administrative Department and the Finance Department in case of various firms/lessees on account of excessive rot may be taken into account in calculating the arrears of royalties due from them and the net balance worked out accordingly.

"No written order need be issued about these amounts which have already been forwarded to you vide our letter referred to above (Document 34), but, the lessees may be told that they would get rebate on account of rot as calculated by the department and agreed to by the Finance Department only in case they pay at least 50% of such balance immediately or at the most by the end of March 1963."

Before this letter was issued it was placed before the Forest Minister Mr. Dinanath Mahajan and it was he who suggested by noting on the margin that it might be sent to the Chief Conservator "confidential by name."

27.47. It would be seen from the above and particularly from the extracts from the decision at the Council meeting (Document 33) that so far as the figures of relief mentioned in the annexure to Document 34 is concerned, in the case of the first seven items there was nothing provisional; only the allowance of the relief was conditional on the lessees paying up 50% of the royalty due after the allowance of this relief on or before the end of the financial year.

27.48. Purporting to act on the basis of the Council resolution, Mr. Nag prepared a statement of the relief that would be allowed to the

several lessees (Document 37). This statement was divided into two parts, Annexure 'A' and Annexure 'B'. Annexure 'A' had 13 items as against 12 which were sanctioned by the Council on 9th February, 1963 and regarding which he had communicated to the Chief Conservator by his letter dated the same day. The additional item was in respect of the lease 10-North Lolab of Mohd. Ahsan Wani. Annexure 'B' had six items, these being the six besides the 12, making up the 18 which had been dealt with by the Commission appointed by the Chief Conservator. In regard to these six, it must be pointed out that in the memorandum which was submitted to the Council for consideration on 9th February, 1963, it had been stated that in the case of some of the leases some more facts had to be ascertained and when this was done, they might be dealt with on the same basis as those which had been laid down by the Finance Department.

27.49. In this statement (Document 37) there were several columns. Besides the serial number and the name of the Forest Division and lessee, the other columns contained information regarding the estimation of the Divisional Forest Officer regarding the rot percentage, the estimation by the Commission, the recommendation of the Chief Conservator of Forests, remission on account of flood loss and lastly the proposed relief for abnormal rot. Item No. 5 in Annexure 'A' relates to the lease of 27-Budnambal. The figures given in the several columns to which I have referred are somewhat interesting. It was stated that the Divisional Forest Officer's recommendation on the rot percentage was 40, but it would be seen from Document 21 dated 16th February, 1961 that his assessment of rot was 30% to 35% and that in kail alone. Coming next to the committee's recommendation it was originally typed as 40%, thus showing that he had perused the report and was aware of its contents, but this was struck out in ink and what we find finally typed is "58%" and the relief on that basis was set down as Rs. 7,25,580. I need not repeat as to how this 58% came in and the manner in which Mr. Nag had managed to put in this figure purporting to take it from the report of the Chief Conservator. Coming next to the column regarding the Chief Conservator's recommendation regarding reduction in royalty, this is the one of the few columns where Mr. Nag has given correct figures, for he has stated that this amount was Rs. 5,68,000. The flood loss granted to this lessee which is also correct—about its justification I will come to later—was Rs. 1,12,022. Lastly, the proposed relief on account of abnormal rot was put down as Rs. 7,25,000. It will be noticed that even when out of his sense of liberality he desired to outdo the Chief Conservator, in his note to the Finance Department (Document 30) the utmost that he could think of then was a rebate of Rs. 6 lakhs. That had been cut down by the Finance Department and it was this reduced figure of Rs. 5,80,000 that had been confirmed by the Cabinet and he had communicated to the Chief Conservator that as the amount of relief to be afforded to this lessee. On what principle he added nearly Rs. 1½ lakhs to this figure one is unable to divine.

27.50. I have only to add that in regard to all the other 11 items in Document 34 the figures of the proposed relief in Document 37 are

identical with those which he had communicated to the Chief Conservator on 9th February, 1963 (Document 34).

27.51. This variation and the manner in which it is effected appeared to me to call for a good deal of explanation from Mr. Nag, but as I was told that he had left the State service and was now employed somewhere in Assam or in NEFA, I could not possibly record any opinion which would reflect adversely on Mr. Nag's character or honesty unless I had afforded him an opportunity to offer an explanation. If the final hearing of Allegations 29 and 31 had been taken up at an early stage, I would have issued notice to Mr. Nag under Section 10(1) of the Act before completing the hearing in respect of these allegations, but as these allegations were taken up almost at the very end of the inquiry, I did not desire to delay proceedings unnecessarily by a notice to Mr. Nag. That is the reason why I do not say anything more about these notings of Mr. Nag except to set them out for such inference as might be drawn from them.

27.52. There appears to have been another meeting of the Council of Ministers on 20th March, 1963 for a decision of the same point as at meeting held on 9th February, 1963. The extract from the minutes of this meeting are to be found in Document 35 (page 18) of the file). The extracts consist of three paragraphs. In the first is a recital of the question of rebates for not having been discussed at a meeting of the Cabinet on the 9th February, 1963. The rest of that paragraph summarises merely the decision recorded in Document 33, namely, that the grant of the rebate proposed was conditional on the lessees paying up 50 per cent of the balance before the 31st March. The only addition in regard to it was that if this was done, orders would issue in the first week of April, 1963 fixing the amount of the relief. It was stated that in the case of more lessees who did not comply with the condition by payment of one half of the outstanding royalty (reduced by the amount of the proposed rebate), "no sanction for allowing them any rebate will be issued and.....the total amount will continue to be shown as outstanding against them....."

27.53. It is the second paragraph that is of some importance in the present context. It runs thus—

"It was further directed that the firm figures of rebate in each case will be worked out by the Forest Minister with the Finance Minister and whatever figure they agree upon be taken as approved by the Cabinet."

27.54. The third paragraph is not very material, as it merely computed the total rebate that would be granted to the lessees at about a crore of rupees and the number of lessees at a dozen and half. This document bears on the margin the signature of Mr. Mahajan and is dated 25th March, 1963.

27.55. The statement (Document 37) prepared by Mr. Nag appears thereafter to have been placed before his Minister Mr. Mahajan after the Council meeting on 20th March, 1963 for the purpose of arriving

at the "firm figures" of rebate. Among the figures scrutinised by Mr. Mahajan were the ones relating to 27 Budnambal and for reasons not apparent Mr. Mahajan in his own hand has corrected the figure of Rs. 7,25,000 against the relief proposed to be granted to this firm as put down by Mr. Nag, into Rs. 6,50,000 and Document 37 bears on each page of this statement the signatures of Mr. Mahajan as Minister for Forests and of Mr. Dogra, the Finance Minister. So far as the other figures were concerned, they were identical with what had been passed by the Council on 9th February, 1963 and they were confirmed by these two Ministers. There are some calculations made on the back of Document 37 which are apparently in regard to the lease now in question, but neither counsel for Government, nor I myself have been able to understand the purport of these figures or their relevance to the relief which was ultimately worked out. The only thing to be mentioned is that after some calculation a figure is arrived at in one place of Rs. 6,25,000 by dividing by 2 the sum of Rs. 12,50,000 which is near the royalty bid for and in another place the figure of Rs. 5,75,000 is obtained by calculating 46% of 12½ lakhs, but how as a result of either of these calculations Rs. 6,50,000 was arrived at is anybody's guess. Again, what further factors were taken into account for adding Rs. 70,000 to what the Finance Department had agreed and which was passed by the cabinet on 9th February, 1963, cannot also be ascertained. The final result, however, was that for some reason, the figure of the relief to be granted to this firm became inflated by another Rs. 70,000 from that which had been decided by the Cabinet on 9th February, 1963.

27.56. The amount of relief to be granted in respect of the three leases of Ghulam Nabi, one in the name of Fairdeal Forest Co. and the other two which are the subject-matter of Allegation 31 in the name of Ghulam Nabi Haji Noor-ud-Din, were placed before the Cabinet on 23rd March, 1963 when the figures of relief set out in Document 37 in relation to these three lessees were passed. As a result of this Fairdeal Forest Co. became entitled to a relief to the extent of Rs. 6,50,000 besides the flood relief of over Rs. 1 lakh to be dealt with separately (vide Document 38).

27.57. It will thus be seen that though no relief was sought on the ground of excessive rot during a year's working ending on 31st December, 1960, and relief was sought for the first time on account of excessive rot by a letter dated 7th January, 1961 after Ghulam Nabi became the sole proprietor of the lessee firm, the amount of relief has snow-balled from stage to stage. The Range Officer and the Divisional Forest Officer had recommended relief to the extent of Rs. 2½ lakhs to Rs. 3½ lakhs based upon 30 per cent to 35 per cent of rot in kail alone, the amount suggested having taken into account the flood loss as well as the reduction in royalty to be granted in view of the erratic bid and an uneconomically high royalty originally offered. The Conservator had agreed with this recommendation both as to the percentage of rot as well as the amount of relief to be afforded. The Chief Conservator, it is obvious, thought that the relief was inadequate. He sent the matter for investigation by a Commission composed of the Conservator and the Divisional Forest Officer who had originally inspected the compartment and made the recommendation together with the Timber Utilisation Officer. These three had by adopting methods of arriving at the percentage of rot on

which I have already commented, computed the percentage of rot at 41.3% and recommended relief to the extent of 40%. Though in one paragraph of their report they had stated that it was kail that was mostly affected by rot, their recommendation was not confined to kail alone but to both kail and deodar. The Chief Conservator of Forests was apparently inclined to agree with this figure in the first instance and his manuscript note (Document 26) proceeds on the basis of his accepting 40% as the percentage of rot as well as that relief was to be calculated on that basis, but the figures in the manuscript were deliberately altered and he summoned courage enough to state in his report that the Commission had computed the rot at 58% on the whole. He originally computed the relief to be granted at Rs. 4.22 lakhs which was corrected in manuscript to Rs. 4.32 lakhs, but in the first typed draft it became Rs. 4.76 lakhs and when it was finally despatched it was inflated to Rs. 5.68 lakhs. Then we have the intervention of Mr. Nag who recorded, after I take it examining the report by the Commission that they had computed the rot at 58% and while stating he agreed with the Chief Conservator's recommendation added Rs. 32,000 of his own to bring it up to the round figure of Rs. 6 lakhs, and it was this figure that he recommended acceptance by the Finance Department. The Finance Department, however, had apparently no means of verifying the figure recommended by the Commission, but took it from Mr. Nag's note as well as from the communication from the Chief Conservator which was enclosed. That Department formulated some principles and accepting 58% as that computed by the Commission, the Chief Conservator and the Forest Secretary, allowed 80% of that figure as the maximum relief to be afforded. This worked out to Rs. 5,80,000. It was this that was put up before the Cabinet and was passed by it on 9th February, 1963. But mysteriously Mr. Nag was again at the job and on the basis that he was "working out the firm figures in accordance with the Council resolution," substituted Rs. 7,25,000 as the amount of relief to be afforded in place of Rs. 5,80,000. This figure was subjected to a scrutiny by the Forest Minister Mr. Mahajan and Mr. Dogra, the Finance Minister and for reasons which are not apparent on the files and which cannot be guessed otherwise because at that stage there was no question of taking into account any new factor which had been omitted at earlier stages, they reduced it not to Rs. 5,80,000 as they should have done, but to Rs. 6,50,000, thus adding Rs. 70,000 to the amount of relief granted by the Cabinet in February, 1963 and it was this figure that was passed by the Cabinet on 23rd March, 1963.

27.58. To complete the narrative, Ghulam Nabi and his other concerns Fairdeal Forest Co. and Tasneem & Co. who had subsisting leases in March 1963, were found to have paid up by 31st March, 1963 one-half of the amount of royalty stipulated, less the rebate proposed under the Cabinet resolutions (for amounts see Document 37). In view of this the firms qualified for the relief and, therefore, became entitled finally to the remission. The figures of the amounts paid in respect of the different leases were put up by the Chief Conservator of Forests to Mr. Nag on 10th April, 1963 and on this basis the Government Order sanctioning the relief was passed on 16th April, 1963 (Documents 36 and 38).

27.59. I have now narrated the facts in relation to the grant of relief whose propriety is impugned in this Allegation 29. What remains to be considered is—

- (1) The answer of the respondent ;
- (2) the consideration of the several cases and other files which were relied on by the respondent and whose production he has called for ; and
- (3) the case of the Government as regards the part played by the respondent in obtaining this benefit for this lessee firm and my findings in relation thereto.

27.60. I shall now proceed to set out the matters stated in the reply of the respondent as regards the remission on account of rot and then examine the case of the Government in the light of the contentions raised by him. I shall thereafter deal with the additional documents of which he has required production and which having been produced have been examined by me.

27.61. The first portion of the respondent's reply is taken up with a historical narrative of the manner in which the forests were exploited as also with the nature of the soil and weather conditions of the Budnambal compartment with a view to establish the prevalence of rot in that area. I am, however, not dealing with those because what we have to consider is not the nature of the terrain in general but the correctness or honesty of the estimates made on the basis of which the percentage of rot was estimated and later the remission calculated.

27.62. In paragraph 22 the respondent refers to the relief granted to several lessees during the years 1948 to 1957 on the recommendation of the successive Ministers. In this connection he has given reference to as many as 13 Cabinet orders which were issued sanctioning these remissions which he says were intended not merely to reimburse the losses sustained by the lessees but also to allow them a profit so as to keep them in business. This, he submits, has been the consistent policy of the State Government and he has annexed to his statement a list of 132 remissions granted to several lessees between 1949 and 1954 quoting the Government orders under which they were granted together with the amount of royalty remitted.

27.63. I shall comment later about these 13 Cabinet orders quoted, in regard to all of which the details have been placed before me by learned counsel for the Government.

27.64. Paragraphs 23 to 25 are concerned with a remission granted to another lessee in 1954 for wrong markings. Apart from the relief having been granted by way of remission of royalty, what the respondent relies upon in respect of this remission is that it relates to compartment 27-South Lolab, which he assumes as being in the same Division in which 27-Budnambal is situated. From this he desires to draw the inference that if there was rot in the other compartments, of South Lolab there must be the similar percentage of rot even here. I am afraid, however, that the respondent has made a slight mix-up here because while the South Lolab Range is in the Kamraj Division, 27-Budnambal

is in the Ramhal Range of the Langet Division. I do not have a sketch of the area to say if these two areas are near each other. Possibly the respondent was misled by the compartment in South Lolab bearing the number 27.

27.65. In paragraph 27 reference is made to five leases in regard to which remissions were granted on various dates either for excessive rot or as flood relief, the lessees being Messrs Tirath Ram & Bros. or allied concerns. The point in repeatedly mentioning this firm as the beneficiary of relief is not clear to me. In other contexts the respondent has referred to the proprietors of this firm as being related to one of the present Ministers and I am, therefore, led to conclude that the object of these references is merely to show that others too have benefited. But the respondent, however, has not stated anywhere that these remissions were improperly granted to this firm and, therefore, no question of the instances cited affording an analogy to the present one would really arise. This is besides the point that even if there was impropriety in the other remissions, they would be wholly irrelevant to the consideration of the charge before me, which is as regards (1) the impropriety of the remission to a particular lessee and (2) the complicity of the respondent in such an act of impropriety. I do not understand the respondent to mean what there were so many unjustified remissions, such that it should be treated as nothing unusual and so not improper.

27.66. The later paragraphs up to paragraph 34 deal with flood loss which I shall take up for consideration later. Besides the respondent appears to suggest in paragraphs 33 and 34 that Ghulam Nabi was a new comer to the forest industry and that he came in only in 1955-56. This is evidently for the purpose of showing that owing to his inexperience a high and uneconomic bid was made by him for the lease.

27.67. No was regards the several statements made against the respondent in the Government's statement of the case, the respondent's answers are briefly these. He had no knowledge of who the constituents of Fairdeal Forest Co. were; he denies that he ever sent for Mr. Firdous or directed him to inflate the rot percentage and recommend the remission. As regards the memorandum placed before the Council of Ministers at which Rs. 5,80,000 was sanctioned as a remission, he states that Mr. Nag had mentioned in the memorandum that the Forest Commission had estimated rot at 58% and after making an allowance of 10% for normal rot, he made a recommendation for relief on the basis of an effective rot percentage of 48, and a remission of Rs. 6 lakhs was recommended. This he says proceeded on rejecting the recommendation of the Chief Conservator of Forests regarding slashing down of the royalty for erratic bids but on an independent estimate of what was proper to be allowed only taking into account the high bid as a factor to estimate the remission of Rs. 6 lakhs.

27.68. In paragraph 52 he says that it is not correct to say that the Finance Department recommended the amount of remission erroneously believing the percentage of rot to be 58 instead of 41.3 adding that the report of the Commission had been misconstrued. He asserts that the Chief Conservator was correct in determining the real extent of the

otr at 58.3% because according to him random checking alone could give the correct figure and it was this figure that was taken into account by the Finance Department. He says averages are not a proper test but only random sampling and further states that the first two methods of arriving at the percentage of rot adopted by the Commission were erroneous and were correctly disregarded by the Chief Conservator of Forests and by the Forest Ministry.

27.69. I do not think it is necessary to refer to the other paragraphs of his reply as they do not bear upon the points which I have set out earlier as those made by the Government.

27.70. Before dealing with the 13 Government Orders and instances as regards remissions granted between 1948 and 1957 referred to in paragraph 22 of the respondent's reply, I shall complete my comments and observations as regards the substantial defences raised by the respondent. I shall, however, take them not in the order in which they are stated in the reply, but in one which is more convenient.

27.71. The first defence is that the bid was erratic, having been made by an inexperienced lessee Ghulam Nabi Haji Noor-ud-Din. This was not the opinion of the Forest officials who considered Ghulam Nabi as a person of great experience in working forests. I have only to recall in this connection the report of the Conservator and the Chief Conservator of Forests in recommending the acceptance of the tender of Haji & Co. in Allegation 30 and of the tender in the present case of Ghulam Nabi Haji Noor-ud-Din, but that apart, it would be seen that this theory of inexperience is wholly irrelevant in the present context. The lease was no doubt originally taken by the firm "Ghulam Nabi Haji Noor-ud-Din", but immediately after the acceptance of the tender and even before the agreement was entered into by the Government, the lease had been transferred to Fairdeal Forest Co. whose composition I have referred to earlier. Fairdeal Forest Co. had worked this lease from November 1958, when under Document 13 dated 19th November, 1958 the work order was issued, right till 31st December, 1960, that is for a period of over two years, during which most of 2071 trees had been felled. Ghulam Nabi came back into the picture only from 1st January, 1961 when on the break up of the family, he took over the Fairdeal Forest Co. I have already referred to his taking over the assets and liabilities of the Fairdeal Forest Co. and the liabilities which included a sum of Rs. 1 lakh advanced by Feroze & Co. In other words, he came into the lease voluntarily, after two years of its working had been completed, and from the sequel, it looks as if he came in with the certainty that he would obtain the remissions which he ultimately got. It is in these circumstances that I consider that the nature of the original bid—assuming that it was too high and erratic—has little relevance to Ghulam Nabi. It cannot but be assumed that when he took over the lease from the previous proprietors, he did so after calculating all the relevant factors including the amount of the bid. The point made by the Government that the claim for loss on account of rot was first made after Ghulam Nabi came into the picture, which is one of the very strong circumstances relied on by them, is not answered by the respondent.

27.72. The second point on which the respondent relies is as regards the prevalence of rot in the compartment based upon soil and other factors. The analogy that he drew between 27-South-Lalab and 27-Budnambal I have already pointed out is erroneous, but it is not that the Government denied the existence of rot because even the markings show that in kail the proportion of the unfit to the total number of kail trees is about 20%.

27.73. The point made by the Government, however, is that there has been a deliberate exaggeration from stage to stage of the percentage of rot. In dealing with this point the respondent ignores the original report of the Divisional Forest Officer in which he found the rot mostly in kail and estimated the percentage as between 30 to 35 without making a deduction of 10 to 15% of rot in deodar and 15 to 20% of rot in kail which would be normal. The reliance that he places on the Commission's report and his attempt to make out that if properly read the Commission ought to have found the rot percentage as 58%, has only to be stated to be rejected. His submission is that the first two methods for arriving at the percentage of rot are unscientific but that only random samples would furnish a sure guide. In this connection it may be pointed out that it was on the basis of random sampling that the Divisional Forest Officer had arrived at the figure of 30 to 35% based on an examination of 22 trees. The respondent has no comment to make on the Forest Commission taking into account even trees marked as unfit in the samples which they considered for estimating the percentage of rot. I consider that it is only in the absence of information regarding the full details of the entire volume of timber which has been converted and a separation of this volume into sound and unsound that random sampling could be resorted to. In the first method which the Commission adopted they had really taken into account the entire volume of the timber cut and it had also assessed the volume of unfit trees. I have pointed out that in doing this they did not take into account separately the two species of trees deodar and kail—because in the earlier stages of their report at least they explicitly stated that it was mostly kail that was affected with rot but that deodar was not to any appreciable extent. But this defect apart, that method yielded a rot percentage of 40. In the face of this I am satisfied that the learned counsel for the Government is right in his submission that resort was had by the Commission to random sampling particularly in selecting the samples in the manner in which they did only with a view to exaggerate the loss. The Commission finally reached 41.3% as the average, whether this average was based upon any scientific principle or not. The Chief Conservator who might be presumed to know the relative value of the methods of checking did not say in his report to the Government that he preferred the results shown by the random sampling to that arrived at on the basis of the other two methods. The assumption in the statement of the respondent that the Chief Conservator did or said so is unjustified. This is further borne out by these different figures

being set out in the three stages which the report underwent—Document 26, 27 and 28 in the course of which he deliberately altered his reference to the Commission's finding of the rot percentage from 40 to 58 and made the necessary changes in the amount of relief recommended which went up from stage to stage. I do not, therefore, agree that the Chief Conservator either preferred the percentage yielded by the random sampling and so fixed it at 58% or that on a fair reading of the Commission's report they had computed the rot at 58%.

27.74. The next point urged by the respondent is as regards the manner in which it was dealt with by Mr. Nag. His submission is that as Mr. Nag rejected the recommendation of the Chief Conservator to slash down the royalty for the reason that the bid was erratic, it must be taken that he had re-examined the entire question and arrived at 58% as the rot percentage and after deducting 10% for trees marked unfit made a recommendation for the grant of Rs. 6 lakhs as relief and that, therefore, any error committed by the Chief Conservator must be taken to be wiped out by the methods adopted by Mr. Nag. Here again, this proceeds upon the misreading of Mr. Nag's note to the Finance Department. He no doubt rejected the suggestion of the Chief Conservator regarding the cutting down of the royalty on the ground of the bid having been erratically high, and who after fixing it at Rs. 9,10,000 as the proper bid which ought to have been made, had recommended a further 25% remission on this, on account of rot. Now when Mr. Nag rejected the suggestion to reduce the royalty, he had necessarily to consider the amount of relief which ought to be granted in view of what the Chief Conservator had stated as factors which justified special consideration for the remission. Therefore, far from his relying on the facts stated in the report of the Chief Conservator, he had according to the respondent, taken into account the Commission's estimate of the rot and had determined this percentage as 58. This approach far from assisting the respondent would bring out in clear light the impropriety of Mr. Nag's recommendation. If, as is suggested, he had examined the report of the Commission himself, it would have been clear to him that the Chief Conservator had committed an error in summarising the result of its findings. His repetition, therefore, of 58% as the figure arrived at by the Commission must, therefore, be deliberately incorrect and designed only to inflate the amount of the rebate. That is so far as Mr. Nag's first attempt is concerned. The respondent has nothing to say as to how Mr. Nag was able to increase the relief to be afforded to Rs. 7,25,000, nor how this ultimately became Rs. 6,50,000—Rs. 70,000 more than what the Cabinet had sanctioned at its meeting on the 9th February, 1963. I must take it that the only answer is that this was the recommendation of the Minister, Mr. Mahajan and that it was passed by the respondent without scrutiny.

27.75 Lastly, he denies that he directed the Chief Conservator to alter his report to the Government in the manner in which it has been done in Documents 26 to 29. As regards this, I have already discussed the respondent's part as it contained in the affidavit of Mr. Firdous, and as emerging from the documents which support that statement, and it is not necessary for me to repeat this.

27.76. I shall now refer to the 13 Government Orders on which reliance has been placed by the respondent in paragraph 22 of his reply in support of his submission that reliefs of the kind, nature and amounts as were allowed in the case of Fairdeal Forest Co. were common in the State and that, therefore, no inference adverse to the propriety of this remission or against him as being instrumental for its grant, could be drawn.

27.77 Serial No. 1 is Cabinet order 735-C of 1948. This order is dated 6th October, 1948, and from the memorandum on the basis of which this sanction was accorded, it appears that the remission was granted because of loss caused by enemy action during the Pakistani raids.

27.78 Item No. 2 is Cabinet Order 81-C of 1949. This is dated 7th February, 1949 and is identical with item No. 1. Only it refers to other leases which were affected by the same calamity.

27.79 Item No. 3 is Cabinet Order 83-C of 1949 which also bears the same date - 7th February, 1949. The lessee had died in the course of the raids by the Pakistanis and there was an amount of Rs. 15,000 outstanding against the lessee Messrs Kartar Singh Kanshi Ram. This outstanding amount was directed to be written off by this Government Order. I might add that by another paragraph of this Government Order the increment of the Divisional Forest Officer was stopped for his negligence in not realising the entire royalty due from the contractor and allowing it to fall into arrears which had thus to be written off.

27.80 Item No. 4 is Cabinet Order 630-C of 1949. This is dated 26th July, 1949 and is really part of the remission granted by Cabinet Order 81-C of 1949 (item No. 2 supra). A separate order was issued because of the lessee being different.

27.81 Item No. 5 is Cabinet Order 1207-C of 1950 dated 26th October, 1950. This was consequential upon Cabinet Order 81-C of 1949 (item No. 2) and represents a grant of further remission to the extent of over Rs. 18 lakhs. Here again the reason for the grant of relief was that the lessees had suffered by reason of enemy action.

27.82 Item No. 6 is Cabinet Order 220-C of 1953. This is dated 20th February, 1953. In the case of four leases a complaint was made that the markings were very defective and that

a very large number of unfit trees had been marked as fit though their unsoundness was apparent even on the surface. In regard to these leases compensation was given to the lessees by marking other fit trees in exchange for the unfit trees. The Cabinet Order further directed the Revenue Minister to locate the responsibility for the wrong markings and report the results of the investigation to the Government.

27.83 Item No. 7 is Government Order 667-C of 1953. This is dated 22nd June, 1953. In this case a lease which had been sold in favour of Messrs Sohni Ram Padam Nabh was cancelled in part and a portion of the forest resumed. For the loss caused to the firm by this resumption the lessee was granted a rebate of Rs. 22,600 in the royalty, the amount being calculated on the proportionate royalty attributable to the cancelled portion.

27.84 Item No. 8 is Cabinet Order No. 261-C of 1954 dated 28th February, 1954 pertaining to the lessees Messrs Tirath Ram & Co. and Messrs Tirath Ram Friends & Co. It is the remission granted to these firms that has been the subject of elaborate discussion and comment by the respondent in his reply. It was found that the compartment leased out to them—27-South Lolab—was affected by abnormal rot. In consequence under one of the several of leases referred to in the Cabinet Order 220-C of 1953 (item No. 6 supra) there had been a direction that they should be given another compartment in exchange, but it was found that even the fresh compartment given to them, also suffered from the same defect. In order to compensate them for this position Cabinet Order 261-C of 1954 was passed. After giving them some concessions by way of reduction in royalty etc., the order of the Cabinet which is signed by the respondent went on to state—

"The case being one in which Government already stood committed in the matter of granting certain concessions which could not materialise, is not to be treated as a precedent for future."

27.85 Item No. 9 is Cabinet Order 269-C of 1954 dated 4th March 1954. In this case at the time of the enemy action and the raids in 1947 a considerable quantity of timber floated down to Pakistan and could not be collected by the lessees. This was stated to be a further remission to what had already been granted by an earlier Cabinet order which directed the truth and extent of this loss to be investigated and a report submitted. The report received was accepted.

27.86 Item No. 10 is Cabinet Order 606-C of 1954 dated 17th May, 1954. I cannot do better than extract a portion of this order to show its nature—

"Sanction is accorded to the write off of outstandings and grant of remissions in royalties as per statement forming annexure to this order, in favour of

forest lessees who held leases in enemy occupied area subject to the condition that no cash rebates will be given against the remissions etc. proposed and these will be adjustable against any other leases held by these lessees in the State or leases in which they hold interest or any future lease which they might take hereafter within two years from the date of the order."

27.87 Item No 11 is Cabinet Order 633-C of 1954 and is dated 22nd May, 1954. In the case of two leases of compartments which were near the cease-fire line trees which were supposed to be marked for sale were found missing, possibly they were on the other side of the line and hence extra trees were marked to compensate the lessees. The text of this Government Order reads—

"The action of the Chief Conservator of Forests in having marked extra trees free of cost in favour of the forest lessees... is confirmed."

and then are set out the leases and the number of trees marked.

27.88 The penultimate order referred to is No. 865-C of 1955 dated 20th June, 1955. Here again I can not do better than quote the Government Order itself for the reasons why the relief was afforded—

"With a view to compensate for the losses suffered by Messrs.... in their leases ... due to pilferage of their timber stocks by the Army personnel and local miscreants during the disturbances of 1947, sanction is accorded to the grant of a cash relief of Rs. 50,000/- to the firm as a special case not to form a precedent"

27.89 The last Government Order referred to is the Cabinet Order 166-C of 1957 dated 14th January, 1957. This was not an independent order but was really an amendment to Cabinet Order 865-C of 1955 just now referred to, which was necessitated by the wrong reference to the compartment under lease.

27.90 It is needless to add that none of these cases furnish any analogy to the case on hand and, therefore, I need not take up more time in considering them in any further detail.

27.91 There are a few points urged by the respondent in regard to the estimation of the percentage of rot at different stages to which some reference has to be made. In the first place he disputes the correctness of the percentage of 30 to 35 mostly in kail which was the figure arrived at by the

Range Officer and the Divisional Forest Officer. The ground upon which he challenges the correctness of this estimate is that the inspection was in the middle of February (it was on 16th February, 1961) and that at that time most of the forests were snow-bound and that consequently he could have inspected only the upper reaches where there was some sunshine. Besides, he has referred to the very small number of trees and stumps which were examined then as indicative of unsatisfactory and slipshod inspection. But this, however, ignores four circumstances:

(1) Ghulam Nabi did not consider inspection at that time not possible, because he furnished the list of 63 trees which from the tree numbers given would appear to cover different areas of the compartment, to be inspected on 16th February, 1961 and if the affidavit of the Range Officer is to be believed—I do not see any denial of this—an employee of Ghulam Nabi was present at the time of inspection.

(2) No doubt the Range Officer has noted the details of his inspection only as regards 22 trees, but Document 19 records on the back page that he had examined 60 of the 63 trees which were claimed to be unfit by the lessee and had found that 22 of them were really fit. These would undoubtedly show that the officer did not confine his inspection to any particular spot, but he inspected trees in the entire area in which the trees listed by the lessee were to be found.

(3) If even among the trees selected for examination by the lessee as being unfit though marked "fit", as many as 22 out of 60 are proved to be fit, I do not see any justification for contending that his estimation of rot in kail as at 30% is unjust to the lessee.

(4) Though the lessee when furnishing the list (Document 20) stated that he would furnish other lists of unfit trees, he did not keep his promise, evidently because he did not think it possible or useful.

27.92 The respondent's contention regarding random checking providing the surest test has already been considered.

27.93 Lastly, in dealing with the charge that it was at his suggestion and direction that the Chief Conservator of Forests made the changes in the several drafts of his report, the respondent after denying the statement in the affidavit of Mr. Firdous, mentions two points as conclusively establishing that he did not interfere or give directions as suggested. Firstly, he says if really he had interfered, he would have asked the Chief Conservator to change the whole of the report. If by this the respondent means that the whole report in relation to this lease, has not been altered, it is not correct. The

report, after a few pages of introductory matters, deals with each of the 18 leases dealt with by the Commission seriatim. Item No. 12 is this lease of compartment 27-Budnambal. It starts at page 30 and what remains of the original report typed in pale red ribbon is merely the introduction where he sets out the name of the compartment, the royalty amount, the volume of the timber sold in the compartment and a calculation regarding the price per cft. of deodar and kail bid and a reference to the 1959 floods. When really the report starts to deal with the rot loss and other factors pertaining to this lease, we get to page 31 and the newly inserted page 31A. The note regarding the next lease starts on page 32 so that it is really a case of the entire report in relation to this lease having been re-written varying a draft which had set out different figures of the rot percentage and of the relief to be afforded.

27.94 The other point relied on is that there were two other leases in which Ghulam Nabi was interested—compartments 53, 54 a&b South Lolab and 9 Rajwar taken in the name of Ghulam Nabi Haji Noor-ud-Din—and the fact that the report of the Chief Conservator did not undergo any alteration in the case of those leases, disproves any interference in this lease as well. This by itself is not a very convincing argument which ought to negative any inference if the same arose from other circumstances. But I might mention that this was the only lease in which Ghulam Nabi was interested as sole proprietor while in the others he was a partner in which case the benefit of any concession Ghulam Nabi would have to share with others. But this apart, I shall have to deal in great detail with the allegations that have been made in relation to the two other leases of Ghulam Nabi which are the subject-matter of Allegation 31 and in view of those features it is possible that the respondent thought that enough remission had been recommended by the Commission and the Chief Conservator and so it was not necessary or possible to further inflate the figures in the manner in which it was done in the case of 27-Budnambal.

27.95 Before concluding this examination of the defence raised by the respondent, I believe I ought to refer to the findings of a commission appointed by the Government after the respondent ceased to hold office, to inquire into the justification for the grant of remission to several lessees by the Government of the respondent when he held the office of the Prime Minister. This Commission was presided over by Mr. Pathania who was once a Chief Conservator of Forests and by two others, Mr. Khajuria also a previous Chief Conservator of Forests and Mr. Firdous. Learned counsel for the Government sought to place before me the findings of this Commission as regards the methods adopted by the officials of the Forest Department for ascertaining the rot percentage and also the manner in which these remissions of royalty were calculated and granted. I, however, intimated to learned counsel that the findings of

this Commission were wholly irrelevant and that I would not take any notice of them and in fact after I stated this, when learned counsel was making submissions in regard to Allegation 29, he did not endeavour to place before me the findings of this Commission when the question of the propriety of the remission granted to the lessee with which Allegation 31 is concerned, was heard.

27.96 I shall now proceed to consider the case of the Government that the lessee, besides the unjust remission of royalty that he obtained for abnormal rot, also got a rebate for a loss by flood which he did not suffer. The amount of rebate granted under this head was Rs. 1,12,022. These floods occurred on the 7th July, 1959 and it is the case of the Government that without the lessees suffering any loss or at the worst any appreciable loss, they were able to get the officials to manipulate the documents so as to yield a figure of a flood loss of nearly 54,000 cft. on which basis they were afforded relief to the extent of Rs. 1,12,022. I shall proceed to narrate the machinery adopted for ascertaining flood loss and the Government case regarding the manipulations.

27.97 By a Government Order 255-C of 1960 dated 27th October, 1960 the Government constituted a Committee for examining the report of the Chief Conservator of Forests regarding the losses suffered by the forest lessees during the floods of 1959. The Committee consisted of Mr. Shahmiri, Legal Adviser to the Government as Chairman, Mr. Harnam Singh Pathania a former Chief Conservator of Forests who was then an officer on special duty with the Government, and Sardar Mohd. Abdullah Khan Lodi, retired Assistant Accountant General, as the two other members. The Committee submitted its report on 16th March, 1961 and by a Cabinet resolution dated 7th April, 1961 the recommendations of the Committee were accepted. In their report the Committee stated that they had been assured by the Chief Conservator of Forests during the discussions that they had with him that they had tried to make the figures as accurate as possible and that they had reduced the exaggerated claims put in by the lessees. In view of the Committee not having worked out the figures themselves, they accepted the Chief Conservator's assurance that the estimate of losses was not exaggerated but on the other hand had erred on the side of caution. They, however, added that the responsibility for the accuracy of these estimates rested with the Department.

27.98 On the basis of these estimates, they sanctioned 30% of the Departmental estimate of the loss in the case of the current leases in Pir Panjal, Kashmir and the Sind Divisions, i. e. in the Southern Circle and in all other cases except a lease in Rajouri, 50% of the estimated loss. The case in Budnambal fell within the second category and was entitled to 50% of the estimated loss. The Committee

added a rider that where the Government had sanctioned any reduction of royalty or relief on the basis of rot, relief on account of floods was not called for, but where the Government thought that it was a hard case in which both should be allowed, it should be subject to a maximum of 30% of the estimated loss in the flood relief. All these facts are taken from File F. S. T 73/61 KL. Though the Government had originally accepted this recommendation, it appears from later correspondence as if the Government did not stand by the rider and granted relief both on the ground of excessive rot as well as for loss by flood in most cases.

27.99 Stated briefly, the case of the Government on this part of the charge is this. The flood, as stated already, occurred on the 7th July, 1959. The lessees, it would be obvious, could suffer loss only if they had timber which had been launched just prior to this date and was afloat at the crucial time.

27.100 The submission of Government is twofold and in the alternative. Before, however, setting this out I shall narrate some preliminary facts which are necessary to be borne in mind to appreciate the case of the Government. The lessee had after they had started fellings applied on 20th April, 1959 for permission to remove a total 42,621 cft. (deodar logs 1495 and kail logs 940) which was granted on 25th April, 1959 and they were launched in the river (vide page 76 File No. 27 Budnambal Range). These must have safely arrived at their destination and removed from the river before 7th July, 1959. We next have in the files an application by the lessee dated 10th May, 1959 for the removal of 15,002 cft. made up of 192 logs of kail (7020 cft) and 227 logs of deodar (7982 cft.) (Document 40). The application bears an endorsement of the Range Officer stating that permission sought had been granted and this is dated 25th June, 1959, and there is an F. 25 permit bearing that date (Document 41). The genuineness of these documents 40 and 41 is disputed by the Government. If Document 40 and the endorsement on it, and Document 41—the F. 25 permit—are genuine in the sense that they bear correct dates, it would show that 15,002 cft. of timber might have been floated at the beginning of July 1959 and so some if not all of it, might have been lost. Other applications for permission to remove timber were long after the floods and so might be ignored. The maximum volume lost by flood could not, therefore, be more than 15,002 cft.—made up of the two species in the volumes set out in Document 40.

27.101 The flood loss in the case of this lessee was, however, calculated not on the basis of the timber he could have launched at the relevant point of time, but on the basis of the total launchings right up to the middle of 1961 less what was calculated as having been collected from the river.

27.102 The submission of the Government is, as I said, twofold and in the alternative;

(1) Document 40 and the connected Document 41 really came into existence on or after 15th July, 1959, and the antedating was done to afford the lessee relief. If they are right here, it would mean that the lessee was entitled to no relief at all, since he lost no timber by the floods.

(2) The other alternative assumes that Documents 40 and 41 are genuine and bear the true dates. Even then the loss could not be more than 15,002 cft. whereas the lessees' loss has been calculated on the basis of their having lost nearly 54,000/-cft. by a process of calculation which could not be justified.

27.103 I shall proceed to take up the first alternative *viz.* that Documents 40 and 41—the application of the lessee for permission to remove from the forest 15,002 cft. of timber and the permission granted to remove the said stuff—are antedated. The evidence in support of this case of antedating is of two kinds. Firstly, statements in the affidavits of the subordinate forest officers to the effect that they were directed by the Divisional Forest Officer to antedate this document in order to assist the lessee; and secondly, evidence of other documents which are claimed to belie the truth of the dates of Documents 40 and 41. As regards the statements in affidavits, I reject them *in limine* since the deponents have not been called for oral examination. Coming next to the documents upon which reliance has been placed, these consist of the felling diaries for the months of April, May and June 1959, on the basis of which it is said that the lessee could not have had 15,002 cft. cut logs to apply for a permit on 10th May, 1959. I am not satisfied that these conclusively establish the case of the Government that the lessee could not have had with him 419 logs for seeking permission to transport the stuff out of the forest to the launching ghat in May 1959. The felling diary for April 1959 (*i. e.* for the period 15th March, 1959 to 15th April, 1959) (Page 98 of the file) shows that during the previous months 300 trees had been felled which with 500 felled in the earlier months gave a total of 800 trees felled. Out of this total 200 trees had been converted into logs which with the previous number yielded a total of trees converted into logs as 730. The number of logs obtained by conversion during the month was 500, and this added to a previously existing 3000 logs made a total of 3500 logs. The figures for May, *i. e.* the fellings etc. till the middle of May, were: trees felled 200, trees converted 175 — into 725 logs. Out of this total of 2435 logs were moved to the launching ghat which corresponds to the application dated 20th April, 1959 and the permission granted on 25th April, 1959 under which 1495 deodar and 940 kail logs (total 42,621 cft) were taken out of the forest. The diary for June 1959 gives the number of trees felled as 15, trees converted into logs 50 and from these 250 logs were got. The diary for July 1959 (*i. e.* till middle of July) records that 419 logs were launched in June which would corroborate Documents 40 and 41. I should add that the genuineness of the felling diary for July is also

impugned by the Government. On the basis of these figures, it is submitted that the entire stuff which was available till the middle of April had been moved to the launching ghat and launched under the permission granted on 25th April, 1959 and that there were no logs at all available for removing which permission could be sought on 10th May, 1959 the date which the lessee's application (Document 40) bears, and the list of logs which he annexed to his application must, therefore, have been antedated.

27.104 I feel unable to agree with this submission. The felling diary for May shows that he had in his forest 4225 logs out of which only 2435 had been removed before the middle of the month. This would leave a balance of 1790 logs still there and this is more than sufficient to account for 419 logs (227 deodar and 192 kail) to remove which he sought permission in Document 40. Besides I am not satisfied that there is any material for holding that the felling diary for July 1959 which records the despatch of 419 logs to the launching ghat in June 1959 and containing an endorsement regarding the loss of flood of some logs is a fabricated document. I, therefore, find that Documents 40 and 41 and the third sheet in Document 43 (felling diary) are genuine and that these establish that the lessee must have suffered loss by flood in regard to the consignment covered by Documents 40 and 41 (7020 cft. deodar and 7982 cft. kail, i. e. 15,002 cft.). What percentage of the stuff was lost is another matter, Government are, therefore, on much stronger ground in their alternative case.

27.105 But the figures of loss were worked out on very different lines. These were based as I stated on a calculation of the total launchings from the beginning to the middle of 1961 less the total computed recoveries from the river. Why when we have the actual figures of the possible extent of the loss suffered by flood, this method was adopted, I have not been able to understand, and that is why I consider, that the suggestion of learned counsel for Government that it was done in order to inflate the figure of loss, has an element of probability and cannot by any means be termed unfair.

27.106 The figure of flood loss worked out by the Forest Department and on the basis of which relief was granted, was based on the computation arrived at in Document 45. The submission of Government in regard to this document is twofold. Firstly the basis on which the figures of loss were ascertained in this document is deliberately faulty and ignores the positive evidence that there was, as regards the maximum loss in the shape of the monthly diary of fellings (Document 43) and the F. 25 permits granted up to the beginning of July (Documents 40 to 42) which would give a correct picture of the maximum loss. Secondly, the figure of loss was deliberately inflated by an interpolation. I agree with both these submissions. When discussing the first alternative case of the Government that the firm

suffered no loss at all, I have pointed out how after the launching at the end of April 1959, the next launching was at the end of June 1959, that the first consignment should have been collected from the river before the floods and it was the second launching of 15,002 cft. that could have suffered loss by the flood. There was thus absolutely reliable evidence in the hands of forest officials to compute the amount of the loss and in the face of this evidence why they indulged in any other type of calculation is not explicable except on the ground that they desired to afford a larger relief to the lessee.

27.107 To come back to document 45, this is a statement prepared by the Range Officer for the purpose of submission to the higher authorities for the computation of flood loss setting out the total launchings by the lessee up to the 21st May, 1960 and the total recoveries from these launchings. The difference was taken to represent loss by flood. Learned counsel for the Government submitted that even assuming that if these figures alone were taken, the computation were correct, errors were deliberately committed to foul even this calculation. Deliberate mistakes were committed at both ends, in the figures of total launchings as well as in those of the total recoveries, the former being exaggerated and some figures of recoveries deliberately omitted to be taken into account. Firstly, other documents clearly establish that 11,460 cft. of timber had been recovered, but this volume has not been taken into account in the total of the timber recovered. It is worth pointing out that when working out the loss on the second sheet of Document 45 this 11,460 cft. is first deducted, but ultimately it has evidently been decided not to take any notice of this recovery.

27.108 Besides, there was an interpolation in this Document 45 which is dated 25th June, 1961 of a launching permitted under F. 25 No. 11 dated 5th June, 1961 of 17,813 cft. of timber made up of 9,990 cft. of deodar and 7,823 cft. of kail. That this is a clear interpolation is seen even on a perusal of the document for after these figures were put in (and these are written in a different ink) variations are made in the other figures to adjust them to this addition. It is obvious that a launching which took place after 5th June, 1961 could never have any bearing upon the loss by flood on the 7th July, 1959. Further this addition to the figures of the volume launched is not counter-balanced by the figures of the recoveries or of the timber at the launching ghat or on the way to it which must have been the case. Learned counsel also drew my attention to other documents which establish that the entries of this launching in June 1961 are a later addition and had been inserted merely to inflate the loss. I hold that the Government are completely justified in their attack on Document 45. In the result, against a maximum flood loss of 15,002 cft., the lessees loss has been computed at 53960 cft.

27.109 But this finding however, does not in my opinion lead to any result so far as the charge against the respondent

is concerned. I say this for three reasons. In the first place the notification does not specifically refer to the rebate on account of loss by flood as due to abuse of power on the part of the respondent. A plausible argument was, however, advanced by learned counsel who referred to the statement in the notification about an undue remission of royalty of "over Rs. 6 lakhs" and that this language might take in also the exaggerated loss on account of flood. I am not persuaded that this is the proper construction of the notification.

27.110 But what makes this, however, worse for the Government is that even in the statement of the case there was nothing specifically said about the manner in which Rs. 1 lakh and odd for flood loss was attributable to the abuse of power on the part of the respondent. In fact the manner in which the flood loss was manipulated was not detailed in the statement of the case, and except that an incidental reference was made to an unjustified rebate on account of loss by flood in summing up the charge against the respondent and in practically repeating the terms of the notification, there was nothing more. What I am pointing out is that the statement of the case did not set out the attack on the several documents and the manner in which they were, according to the Government manipulated, so that if the statement of the case constituted the pleading as has been understood, the respondent was not called on to answer the case of the Government in regard to the relief on account of flood loss, and in fact the respondent as well as Ghulam Nabi have understood the Government's case that way. Beyond stating that they had nothing to do with the manner in which the flood loss was computed they went into no further details.

27.111 And lastly, even in the affidavits which have been filed in support of the case as to manipulation of these figures and their inflation to justify the large payment of over Rs. 1 lakh odd as compensation, there is nothing to suggest that it was at the instance of the respondent either directly or indirectly that these manipulations in documents were effected.

27.112 In view of these circumstances I hold that no case of abuse of power on the part of the respondent has been established so far as the computation or payment of the flood loss is concerned, though undoubtedly Ghulam Nabi has obtained an improper and unjustified financial advantage.

What now remains for consideration are—

- (1) The financial advantages gained by Ghulam Nabi as

a result of the improper remission allowed to him; and;

- (2) the amount of financial advantage gained by Ghulam Nabi by reason of the abuse of power on the part of respondent.

27.113 In regard to the first, it has to be considered in respect of two matters: (a) flood loss and (b) remission for excessive rot. As regards the flood loss, the utmost that could have been claimed was on the footing of the 15,002 cft. of timber covered by the F.25 permit sought by the firm on 10th May, 1959 which alone could have been actually afloat on the relevant date and might have been lost. This is the volume covered by Document 40 and on that basis 7,982 cft. of deodar and 7020 cft. of kail lost would be the volume that could possibly have been floated down the river in the first week of July 1959. Though Government dispute even the loss of this volume, I have held that Documents 40 to 43 were genuine and that this volume could possibly have been lost, though as I have had occasion to point out earlier, it was estimated that only about 75% of the stuff floated was lost. If the entirety of this consignment be taken as the volume lost by floods, on the basis of the Government order of 7th April, 1961 in relation to flood loss, the firm would have been entitled to a relief to the extent of about Rs. 23,000. The Forest officials, however, on foot of the calculation in Document 45 whose correctness I have discussed, computed the flood loss at nearly 54,000 cft and on that basis allowed a remission of Rs. 1,12,022—this being 50% of the value of the timber lost. I have also found that this excessive allowance is not shown to have been due to any abuse of power on the part of the respondent, but nevertheless it was an advantage gained by the firm to which it was in justice not entitled, so that on this head, therefore, the firm obtained a pecuniary advantage of at least about Rs. 90,000 by way of excessive allowance for flood loss.

27.114 Next as regards the claim for abnormal rot, I have given reasons for holding that there was nothing seriously wrong with the Divisional Forest Officer's calculations. If 30% of rot had been determined and as in all other cases there had been an allowance of 10 to 15% of the rot as being normal—for it is only abnormal rot that has to be compensated—because it assumed that allowance is made by lessees for normal rot when they compute the amount for which they submit their tenders. A deduction of 15% would be proper in the case of this compartment seeing that in the total markings over 20% was unfit in kail. That would leave 15 to 20% as the percentage of abnormal rot. Even taking the higher figure of 20%, the reduction in royalty would be about Rs. 80,000, seeing that of royalty of Rs. 12,51,000 about Rs. 8

lakhs was attributable to deodar and about Rs. 4 lakhs to kail. The Divisional Forest Officer's recommendation evidently put the figure of the remission for abnormal rot at between Rs. 1,20,000 and Rs. 1,40,000 based on allowing the entire 30% or 35% of the kail volume as rot. He had added to this the flood loss and had arrived at the figure of Rs. 2 1/2 lakhs to Rs. 3 1/2 lakhs after taking into account also the high and erratic bids. I believe I am right in saying that the loss attributable to the excessive rot was computed by the Divisional Forest Officer and the Conservator at between Rs. 1.25 to Rs. 1.50 lakhs. As the firm have been finally allowed Rs. 6 1/2 lakhs, I consider that the excessive allowance made to them would amount to about Rs. 5 lakhs.

27.115 In saying this I must not be taken to have ignored the findings of the Commission. No doubt I have not accepted the case of the Government that the members of the Commission were individually influenced by the respondent to exaggerate the loss, but I have pointed out enough to show that they too had been at pains to find some method for showing an increased rot percentage. As the respondent himself has rightly pointed out, the inclusion by them of the figures of unsound timber at various depots was really not fair to the Government because admittedly there was a sizeable number of trees that had been marked unfit and they had been felled and converted and that stuff was among that which had found its way to the launching ghats and the depots. The only method by which an accurate assessment could have been made was by examination of the individual stumps of the 2081 marked trees. This they did not undertake.

On the other hand the random sampling that they did was unsatisfactory because of the method of selection of the sample trees for examination in which even a tree (No. 1460) which had been marked as "unfit" was included. In reaching 40% by the first method when they made a check of the unsound timber, they deliberately avoided specifying the species to which this unsound stuff belonged. This has particularly to be commented on, as the Divisional Forest Officer and the Conservator who had earlier examined the compartment found that the rot was mostly in kail and not in deodar, and both of

them were members of this Forest Commission. Even if, however, 4% be taken as their estimate, it could apply only to kail and if allowance were made for the normal rot in that species, we would get the same figure as 30% which was the figure at which they had previously estimated the rot. This, therefore, confirms me in my view that the firm has unjustly benefited to the extent of about Rs. 5 lakhs in the matter of relief for excessive rot.

27.116 But the whole of this is not to be attributed to abuse of power on the part of the respondent because I have held that he came into the picture only at the stage of the report by the Chief Conservator. The relief recommended by the Chief Conservator had jumped up from Rs. 4,32,000 to Rs. 5,68,000 and the lessees had been finally granted relief to the extent of Rs. 6.50 lakhs. But this became possible because of the deliberately wrong statement by Mr. Firdous that the Commission had estimated the rot at 58%. It was the support which this error gave that led Mr. Nag to recommend to the Finance Department that the lessees should be allowed Rs. 6 lakhs, i. e. after deducting 10% for normal rot and the Finance Department itself recommending Rs. 5.80 lakhs on the basis of 80% of 58%, i. e. 46.40%. Later Mr. Nag raised it to Rs. 7.25 lakhs which was possibly on the basis again of allowing for 58% in full and for the final figure of Rs. 6.50 lakhs fixed by Mr. Mahajan, the basis for which is not known except that it is slightly less than Rs. 7,25,000 and is possibly a compromise between Rs. 5,80,000 and Rs. 7,25,000. So it is that 58% that was introduced by the Chief Conservator that is ultimately responsible for the final figure of Rs. 6.50 lakhs of the remission granted to the firm. If that had not been there, the firm would have obtained a remission of 80% of 40%, i. e. 32% which would come to about Rs. 4 lakhs. So, the amount of excessive relief attributable to the respondent's abuse of power by his instructions to the Chief Conservator is roughly about Rs. 2½ lakhs. In other words, if the Chief Conservator had stated correctly the Commission's estimate of rot percentage as 40%, the amount of relief which the lessee would have obtained would have been Rs. 4 lakhs, being 32% of Rs. 12,51,000. Therefore, the financial advantage by the firm by the abuse of power on the part of the respondent I compute roughly at Rs. 2½ lakhs.

28.1. It will be recollected that among the leases put up for auction in October-November, 1958 (Document 2 in Allegation 29) were two other leases, both of two year duration, one of 9-Rajwar in Langet Division and the other of Compartment 53b and 54a & b in South Lolab. The highest tender in respect of both of these leases was by Messrs Ghulam Nabi Haji Noor-ud-Din of which firm besides Ghulam Nabi, two of his sons and his daughter-in-law were among the partners. It is the case of the Government that in respect of these two leases as well, an unjust and excessive remission of royalty was obtained by the firm and that this was achieved by the abuse and exploitation of the official position of the respondent. The total amount of benefit which according to the notification accrued to the firm in respect of these two leases is about Rs. 13 lakhs. The charge in respect of this instance of abuse of power is contained in Allegation 31 which as notified reads as follows :—

“By the abuse and exploitation of the official position of Bakshi Ghulam Mohammad undue pecuniary advantage, to the tune of about thirteen lakhs of rupees, accrued to Messrs Ghulam Nabi Noor Din, Forest Lessees— a firm in which Haji Ghulam Nabi his brother, had a share. This was achieved through the Forest Department granting excessive and undue remission of Royalty in respect of the leasing of Compartment Nos. 9 Rajwar, Langet Forest Division and 53-B, 54-A and 54-B, South Lolab, Kamraj Forest Division.”

28.2. It will be convenient to deal with the case in respect of these two leases separately though the firm involved is the same and the methods which according to the Government were adopted to secure this advantage, were nearly identical. I shall first take up for consideration the lease in respect of compartment 9-Rajwar in Langet Division. Here, as in 27-Budnambal whose facts I have considered in relation to Allegation 29, the ground upon which remission of royalty was sought and obtained, was abnormal rot. Here as there, the matter having come up to the Chief Conservator of Forests was referred by him to the Commission of Forest Officers to whose details I have referred earlier and on receipt of their recommendation which in this case was accepted by the Chief Conservator, his recommendations were contained in the same 43 page note to Government. As a result of the Government's acceptance of this recommendation, after examination by the Finance Department, a total amount of Rs. 7,02,000 was determined as the reduction of royalty to be allowed to the firm. Besides, the firm was also granted flood loss to the extent of Rs. 1,26,418 and it is the case of the Government that the figures of the flood loss were also manipulated and inflated to arrive at this sum. The questions, therefore, which I have to consider, are—

- (1) Whether the Government have established that the lessee was not entitled to relief for abnormal rot to the extent of Rs. 7 lakhs odd which were ordered to be granted to him by the Government ?

- (2) Whether Government have established that the lessee did not suffer loss by flood so as to justify the remission of royalty to the extent of Rs. 1,26,418 which was allowed to him ; and
- (3) Whether these improper remissions were made as a result of any direction, intervention or any other form of abuse of his official position by the respondent.

28.3. I shall now proceed to consider the documents upon which the Government have rested their case and in doing so adopt the same method as I did in regard to Allegation 29, namely, to comment on each document as I proceed.

28.4. The marking list which was a part of the tender notice of this compartment 9-Rajwar is Document 2. I might have to refer to some portions of this list later, but shall pass this over for the present except to state that the total number of trees in the compartment was 3,644; of them 2957 trees were marked "green fit" made up of 2547 deodar and 410 kail trees. The total volume of the timber of these green fit trees was approximately $4\frac{1}{2}$ lakhs cft. As I said earlier, the firm of Messrs. Ghulam Nabi Haji Noor-ud-Din was the highest tenderer and the amount for which the lease was bid was Rs. 22,61,000. This was among the leases recommended for acceptance to the Government by the Conservator of Forests endorsed in his turn by the Chief Conservator. It was placed before the Government at the same time as the lease of 27-Budnambal and was sanctioned on 14th November, 1958 (Document 7). In pursuance of the sanction an agreement of lease was entered into between the Government and the firm in the usual form (Document 8), though it was executed only on 11th November, 1959, that is nearly one year after the Government order, but nothing turns on this delay.

28.5. Almost immediately after the tender was accepted the firm addressed an undated communication to the Forest Minister (Document 10 dated on 31st December, 1958) signed by Mr. Ghulam Nabi on behalf of the firm. After pointing out that the firm had made the highest tender, the letter stated —

"To our great dismay we find on working the said coupe that about 30% trees marked as fit turn out to be rotten and unfit."

This was the extent of rot among deodar trees. In kail the rot was said to be 40%. They would up by praying that justice may be done to them. This letter was on receipt immediately sent to the Conservator of Forests, Kashmir Circle Mr. Firdous for disposal. There was some comment made by learned counsel for the Government that the representation from the lessee should normally have been sent to the Chief Conservator of Forests who was then Mr. Khajuria but that he was bypassed on this occasion and that his subordinate Mr. Firdous was contacted directly with a view to have a favourable report sent up. I feel unable to draw this inference because we are still in 1958 and it

was only much later that there is evidence of Mr. Firdous having taken interest in inflating the relief allowable to Ghulam Nabi.

28.6. Immediately on receipt of Document 10 the Conservator forwarded it by name and marked 'confidential' to the Divisional Forest Officer, Langet

"for favour of personal inspection of the trees which are stated to be "fit" but on fellings have turned out either unsound or "unfit", (vide Document 11 dated 3rd January, 1959).

The Divisional Forest Officer thereupon directed the firm to send him a list of the trees which in their representation they had stated had been "marked fit" but which "on felling turned out to be unsound or unfit" (Document 12). Having made such a categorical statement in Document 10 about trees marked fit turning out to be unfit on felling and even estimating the percentage of such trees at 30% in the case of deodar and 40% in the case of kail, one would have expected the lessee to have with him a list of these trees which could be inspected by the Forest officials. However, on receipt of Document 12 the firm wrote a long reply, portions of which have to be extracted, since Government have placed considerable reliance on the contents, as furnishing proof of the unreality of the claim and the untruthfulness of the assertion contained in it. In the letter to the firm the Divisional Forest Officer had said -

"Please ask your authorised agent to accompany me on the inspection to show to me the said trees. Some data may be communicated....."

In their reply the lessee firm stated -

"With a view to inspect on the spot the unfit trees, you had been pleased to direct.....that such trees should be kept in tact pending inspection on the site pursuant to which all stock.....has been placed in tact..... You are very well aware that our work cannot proceed without labour and the labour is bound to deliver at the lorry stands by the 1st of the month of Chet 2015 all the stock of their sections.... Being aware of the forest working, you can realise that our work of felling, conversion and launching is usually undertaken during the snowy season.....we had so far detained the labour.....The labour cannot wait for any further time..... They have till now been and will be detained and we will be grateful to receive your orders in the matter to enable us to act accordingly."

I agree with the learned counsel for the Government that this letter was delightfully, I was about to say designedly, vague, it did not fix any date as to when the inspection was desired or could take place, did not say that any authorised representative would accompany the officer, did not give any data as to "the fit trees which on felling were found unfit"—matters on which information was sought in Document 12. It was also not clear whether they desired to have an inspection or

whether they were stating that it was not possible to have an inspection then. On this letter the Divisional Forest Officer's office noted, without putting it up to him—

"The forest may have to be inspected before clearance of snow"

and the endorsement of the Divisional Forest Officer himself was—

"It is impossible to inspect the coupe at present. It will be entirely in lessee's interest if he can preserve the unfit trees for my inspection which can in no case be undertaken earlier than the 3rd week of March"

and it is dated 10th February, 1959. In accordance with this noting a reply (Document 13) was addressed to the firm stating that the forest being under deep snow inspection was not possible immediately and this might have to wait till the last fortnight of March, 1959 and that it was in the lessee's interest if such trees as were rotten were kept in tact till then. This letter was received by the firm on 21st February, 1959, but it did not acknowledge it and took no action in pursuance of it. Meanwhile the fellings of the trees in the forest continued and quite an amount of timber was being gathered. This will be evident from letter addressed by the firm on 21st May, 1959 to the Conservator of Forests (vide File C-VII 120— CF. North 9 Rajwar page 78) in which they sought permission to bring 2 lakhs cft. of deodar and kail from Doabgah to Sheiteng Saw Mill stated to have been extracted from compartment 9-Rajwar and 53 etc. South Lolab. From the endorsement on this letter by the Conservator it would appear that of the 2 lakhs cft. $1\frac{1}{2}$ lakhs cft. were from 9-Rajwar and 50,000 cft. from the other compartments. The permission sought was granted. I am citing this merely as illustrating the fact, that though working was proceeding vigorously in the forest covered by this lease, no attention was paid to have the extent of the rot which was said to be present in the compartment in the letter (Document 10) being verified by the officers. In this connection it might be recalled that by his reply (Document 13) the Divisional Forest Officer had stated that he could inspect at the end of March, 1959, but no attempt was made to take advantage of this offer.

28.7. Pausing here, I must advert to a letter addressed by the firm on 12th August, 1959 (page 88 of the same file). In this they made a request for alternative arrangements for the transport of their timber, the usual waterway prescribed having become unusable owing to the floods in July, 1959. I am referring to this letter for the purpose of stressing that there is here no repetition of their claim on account of rot loss or any request to the authorities to inspect the same to verify their claim. The letter states—

"As is well known,the said lease has been purchased by us at higher rates than the other leases in the same areaThe recent floods have added to our difficulties."

I might add that the request made here was granted but this was to be temporary up to the end of October, 1959.

28.8. In September, 1959 the question was raised as to the fixation of the royalty rates for the release of timber on payment of which alone timber could be taken out of the forest. The firm protested against the figure worked out (vide 63R dated 22nd September, 1959 page 157 9-Rajwar Division File Part I) and the Divisional Forest Officer was required to check the figures which were recorded by the Range Officer. A random check was made of two kail and two deodar trees and he recorded the actual outturn from fit timber was 127 % in the case of deodar and 117 % in the case of kail. Some trees marked unfit were also examined and the Divisional Forest Officer recorded that "in 60 % of the trees marked unfit 50 % of the stuff is turning out fit" and on the basis of these outturn figures he fixed the figure of the royalty payable. The Range Officer had fixed the royalty on the basis of an average outturn for deodar at 120 % and for kail at 110 % (vide page 161 of the file, *ibid*, letter of the Divisional Forest Officer to the Conservator of Forests Kashmir dated 19th October, 1959). When the royalty rate so arrived at was communicated to the firm on 12th January, 1960 (vide page 119 of C.F. North's File C.VII/120), they replied by a letter dated 13th January, 1960 (page 120 of the file) requesting that the amount was in excess of what the lessees had calculated and that it might be reconsidered. It was reconsidered and it was slightly reduced though no change was made in respect of the outturn on the basis of which this was fixed. It was again revised though on the basis of the same percentage of outturn but allowing for some margin because of a further request by the lessee (vide page 187 of the file, letter dated 28th May, 1960).

28.9. I have set out this narrative of the work that was proceeding and the correspondence that was had from March, 1959 onwards for the purpose of emphasizing that though felling on a fairly large scale was proceeding the felled trees were being converted and the logs both in round as well as in sawn form were being exported and marketed, the complaint about rot contained in Document 10 dated 31st December, 1958 ending with the correspondence at the end of February, 1959 was not revived or even so much as adverted to. The first time after February, 1959 that we have any reference to the subject of abnormal rot was in an application by the lessee dated 14th July, 1960 addressed again to the Minister in charge of Forests. The original is not in the file, but a copy of it which was enclosed to a letter by the Deputy Secretary (Forests) to the Chief Conservator directing the latter to conduct an inquiry and send up a report has been filed as part of Document 14. It repeats the complaint made earlier that a large number of trees marked fit turned out to be rotten when they were felled, but curiously enough without making any reference to the earlier correspondence starting with Document 10 and ending with the letter to the lessee dated 21st February, 1959 (Document 13), it asserts that the Divisional Forest Officer and the Conservator had personally been apprised of the facts and were fully satisfied. The comment by the learned counsel for the Government that the statement was tendentious appears fully justified in view of the complete absence of any reference in the files to either the appraisal of the rot except by Document 10 to which and the correspondence which then ensued I have already referred, or their feeling of

satisfaction about its existence. The application winds up by requesting that this was a case where on the analogy of other cases, a genuine claim on the basis of abnormal rot might meet with sympathetic consideration. One sentence, however, I feel ought to extract to show the degree of elasticity in regard to the statement of facts contained in this application. This sentence reads—

“Many requests made in time to the Divisional Forest Officer having not been settled as yet, the matter stands for priority for its final settlement before it is more late.”

In view of what I have said earlier, it is hardly necessary to comment on the falsity of this statement.

28.10. Immediately the petition was received it was forwarded, as stated earlier, to the Chief Conservator of Forests for inquiry and report. This was apparently not immediately attended to by the Chief Conservator, for we have reminders requiring that officer to send up the reply early as this was already overdue (vide Document 15). The Chief Conservator took action on the reminder and the orders he passed trickled down in the official hierarchy and finally we have a list of 211 stumps prepared by the lessee as those which might be inspected by the territorial officers. It was stated that this list covered the trees felled up to 28th April, 1960 and by this date the lessee had felled 2300 trees. This list (Document 16) was handed over to the Range Officer. The list shows that though the volume of deodar trees marked fit was over eight times that of kail, there were only 160 unsound deodar in the list out of 210, showing that if anything unsoundness might be in kail and not in deodar.

28.11. Meanwhile on the direction by the Chief Conservator the Conservator had asked the Divisional Forest Officer to make an inquiry who in his turn directed inspection by the Range Officer. The Range Officer submitted his report to the Divisional Forest Officer on 7th October, 1960 (Document 17). Along with this report he forwarded the list (Document 16) furnished by the lessee. He himself examined 100 trees which he selected and of them it is found that 15 were in the list furnished by the lessee. On the basis of this sample checking and his examination of the stumps of the felled trees he estimated the rot at 15%. It has, however, to be noticed that among the 100 trees which he examined presumably as trees marked “fit” but which on felling turned out to be affected by rot, as many as 18 were those marked as “unfit” and one was a dry tree marked “unfit”.

28.12. The Divisional Forest Officer on receiving this report from the Range Officer, forwarded it along with a separate report by himself (Document 18). In this he stated that it was physically impossible to check each and every stump. (It will be recalled that there were as many as 2300 trees which had been felled by the lessee by then). He had examined a cross section of the area and inspected 29 stumps in representative areas and found the prevalence of some degree of rot. The main basis upon which he proceeded was that of 2300 trees which had been felled so far the lessees had submitted a list of 211 trees (the number was really 210 because one tree is found to be duplicated) and on the basis of this he found that the rot percentage among the trees marked fit was 12 to 15%.

28.13. This report was submitted to the Conservator on 12th October, 1960. The Chief Conservator considered this report and it might be mentioned that in the case of the other lease 53, 54-South Lolab also there was a similar claim by the lessee and similar examination at this time and the Conservator dealt with both these reports from the Divisional Forest Officer in the same letter (Document 19). The Conservator while forwarding the report of the Divisional Forest Officer agreed with him and the Range Officer that "there is some rot in the compartment but that the actual amount of rot cannot be worked out due to the fact that most of the timber had been felled and removed." This was because even though the stumps might disclose some degree of rot, it might not in several cases extend to the entire tree so that quite a length of the tree would be sound and, therefore, without an examination of the logs it would not be possible to have an accurate estimate of the exact loss caused to the lessee by the presence of rot. He, therefore, said--

"It does not seem possible to work out the exact position of rot.....at this late stage, but the fact that there has been some rot cannot be denied. The rot (in respect of this Langet lease) has been worked to 12% approximately"

adding that besides the rot the lessee had suffered flood loss to the extent of 61,000 odd cft. On receipt of this report the Chief Conservator of Forests Mr. Firdous wrote to the Deputy Secretary to the Government as a reply to his note dated 20th July, 1960 (Document 14) calling for information. He stated that usually no serious notice was taken of rot where its extent was 10 to 15%. Besides, he pointed out that as the lessees had practically removed all their outturn it was not possible to ascertain the overall position to arrive at a correct idea of the rot percentage adding that these lessees (Ghulam Nabi) secured leases at excessively high prices and they made claims for losses when the price of timber came down in the market. He, however, promised a detailed report on hearing from the Conservator.

28.14. Subsequent to this date it would be recollected, the Chief Conservator appointed a Commission of three Forest Officers (The Conservator of Forests of the Circle, the timber Utilisation Officer of the Circle and the Divisional Forest Officer of the Division), to examine the principles upon which compensation should be afforded for abnormal rot together with an investigation to the actual percentage of rot in the compartments which were subject of leases referred to them. The cases of 18 leases were referred to the Commission and these two concerned in this allegation were among them.

28.15. Pausing here, I should make a brief reference to a point sought to be made by the learned counsel for the Government as regards the reference of this case to the Commission. It was his submission that the Chief Conservator of Forests, after expressing the opinion that the rot percentage was too low to be taken notice of, had specially selected this lease for being referred to the Commission in order to help the lessees, the suggestion being that this was done at the instance of the respondent. This was sought to be supported or reinforced by a reference to certain other cases where claims for rot were under consideration by him but which were not referred to the Commission. I have examined

the facts in relation to these references and this has revealed that in all the other cases to which learned counsel for Government adverted as comparable cases where the matter was not referred to the Commission, the matter had not become ripe for reference to the Commission. It would be recollected that the Commission was set up in May, 1961 and they submitted their report in August, 1961. The other cases to which learned counsel for Government referred, were still in the stage of correspondence and examination by the subordinate officials of the Forest Department till long after August, 1961. I do not, therefore, consider that there is any basis for the suggestion that the leases in which Ghulam Nabi was interested were specially selected by the Chief Conservator at the instance of the respondent for reference to the Commission.

28.16 After they entered on their duties the Commission in order to arrive at its estimate of the rot percentage called for information from the Range Officer to submit detailed statements regarding the stock position, classified according to the species, as well as differentiating between the sound and the unsound. The report about the stock position which was prepared by the Forestor in Document 24 dated 9th July, 1961 shows that out of a total of 3308 deodar green trees marked fit including those marked as supplementary, 3293 trees had been felled leaving only 15 trees still standing. The total fit green kail trees in the compartment leased were 754 including again 80 marked as supplementary and all of these 754 had been cut. Out of the deodar trees 40 trees which had been felled had not been converted and the number of kail trees felled but still remaining for conversion was 10. The total number of deodar logs in the forest was 4360. Out of them 3760 logs of approximately 67,680 cft. were found to be sound while only 600 logs of approximately 10,800 cft. in volume were unsound. Besides there were 700 deodar poles of approximately 3500 cft. all sound. As regards kail, the total number of kail logs in the forest was 600 ; of them 400 were found to be sound and 200 unsound, their volumes being 7200 cft. and 3600 cft. approximately. In kail there were besides as many as 120 poles of an approximate volume of 600 cft. all sound. This would have yielded a rot in deodar of about 15 % and in kail about 50% which would roughly be equal to the percentage of rot in the marking, i.e. 11% and 50%, thus showing that there was no abnormal rot. There must have been some rot in the trees marked unfit, but this was made up or nearly made up by the slight increase in the outturn percentage. The stock at the launching ghat was nil.

28.17. These figures were accepted by the Range Officer as seen from Document 25 which is the copy of the statement in the office of the Range Officer which he forwarded to the Divisional Forest Officer. In this report (Document 25), however, he added the launching figures. These totalled 4,27,332 cft. which was the total of the volume of 15,199 deodar logs and of 4716 kail logs besides 790 poles of both the species.

28.18. Subsequently, however, in the original of which Document 25 is the office copy, radical alterations and interpolations were made in the figures (Document 26). While the total number of "trees felled" "trees standing", "trees converted", "trees felled but not converted", was left untouched, the figures in the column relating to the classification of the deodar logs and their cubical volume into sound and unsound

were altered. I have already pointed out that in Document 25 which incorporated the figures found in Document 24—the Forester's report—the sound deodar logs were stated to be 3760 of approximately 67,680 cubic feet and the unsound logs as 600 or 10,800 cft. The total of these logs viz. 4360 was retained in Document 26 but a change was made in the figures of the sound and unsound logs and their volume. The figure of 3760 sound logs was corrected to 1808 and the figures of 600 denoting the number of unsound logs was corrected into 2552 and the volumes of the sound and unsound which were originally 67,680 cft. and 10,800 cft. respectively was altered into 29,980 cft. and 48,500 cft. Curiously, however, a noting in ink in the right hand top corner of Document 26, which worked out the percentage of rot in deodar and kail on the basis of the figures the document originally contained—D (for deodar) 15% and K (for kail), 50% which would be only on the basis of the original figures, was left untouched. These interpolations were made by over-writing or by striking out the figures and putting in fresh figures. Document 26 was a carbon copy of Document 25 as the latter originally stood and these corrections are in blue ink. A clean copy embodying the corrections carried out in Document 26 was prepared and was forwarded to the Divisional Forest Officer bearing the signature both of the Forester as well as that of the Range Officer. This is Document 27. It is stated in the affidavits that the corrected copy of Document 26 was returned to the Range Officer who was directed to produce a statement which did not bear any of these corrections, which is borne out by a comparison of Documents 26 and 27.

28.19. It was on the basis of the figures contained in this tampered Document 27 that the final estimate of the rot percentage in the case of this compartment was determined by the Commission. Now it is the case of the Government that this fraudulent alteration was made in order to inflate the percentage of rot by the Range Officer at the instance and to the dictation of the Divisional Forest Officer and they relied upon the affidavit of the Range Officer in support of their submission. On principle I am not accepting this statement in the affidavit of the Range Officer. It is, however, clear from the Documents 24, 25 and 26—the latter as it originally stood and as it was finally corrected—that there has been a deliberate effort to inflate the figures of the unsound logs and that there could be no doubt that this has been done only to assist the lessee to obtain the benefit of a higher percentage of rot.

28.20. The Commission of Forest officials inspected the compartment towards the end of June and they submitted their report on 19th August, 1961. The report is Document 28 and they found that there was nothing wrong in the markings but that the rot which they said was present both in deodar as well as in kail was due to poor drainage. As regards the percentage of rot they rejected the previous report of the Divisional Forest Officer (Document 18) and of the Conservator in Document 19 where the rot percentage was determined as between 12% to 15% as having been based on "prefunctory random checking". In saying this they did not take into account the circumstance that out of a total of 2300 trees which had been felled the lessee was able to list only 210 trees as being found "unfit" though originally marked "fit". In this connection I cannot but refer to the fact that though Ghulam Nabi when he submitted a list of 63 unsound trees in compartment 27—

Budnambal in Document 20 dated 16th February, 1961 in Allegation 29, had stated expressly that these were not the entire number of trees which were found to be unfit but that a further list would be furnished later though ultimately he forwarded no such list, yet in the case of this lease he did not even make any such reservation which was indicative of the list being exhaustive so far as his knowledge went.

28.21 After thus rejecting the earlier estimate as based upon incomplete and therefore misleading data, the Commission proceeded to make their own calculations and it is necessary to refer to these because a considerable part of the case of the Government rests upon the contention that the methods adopted for calculating the percentage as well as the figures taken into account were deliberately chosen to inflate this percentage. They started by discarding the evidence afforded by Document 16, which was the list of 210 unsound trees furnished by the lessees out of a total cutting at that date of 2300 trees. Next they took into account the present converted stocks in the forests and determined the percentage of rot in the outturn. It was not suggested that this method was in theory wrong but what was at fault here was their adoption of incorrect figures. The total converted volume of timber was correctly stated as 92,700 cft. which is the figure disclosed by Documents 24 to 27. They then proceeded to state—

“Out of this 52,100 cft. have been checked and found unfit. This works out to 56 % of rot on the whole.”

This figure was arrived at on the basis of Document 27 specially prepared for their use which showed that 48,500 cft. of deodar instead of the original 10,800 cft. was unsound. Whereas on the basis of the original figures (vide Document 24) deodar showed only about 15% rot and kail about 50 % averaging, if they had to be averaged 32 %, they on the basis of the interpolation in Document 27 arrived at 56 % of rot on the whole.

28.22. The second method which they adopted was based upon the launching figures. These figures were also taken from Document 27. These figures had not been altered in Document 27 from what they were in Document 25 and hence may be taken as correct. The total stock launched was 4,27,332 cft. out of which as much as 3,31,744 cubic feet were deodar logs and poles while the rest were kail. Out of this they found the unsound stuff at Doabgah, the depot and the saw mills at 1,09,478 cft. They, however, made no attempt to classify the unsound stuff according to the species though they had the materials before them. As if they were allowing a margin for any error in favour of the lessee they added in parenthesis that “a good substantial volume has been sold out which has not been taken into consideration”, i.e. that what was sold was rotten and yet this was not taken into account. If they had proceeded on the basis of these figures it would have yielded 24% as unsound stuff though their failure to differentiate between the two species—deodar and kail—in computing the total volume of the unsound stuff must necessarily lead to an incorrect calculation of the relief to be afforded. But as in the case of the 27-Budnambal (with which Allegation 29 is concerned) they deducted from the total of launching 46,500 cft. as flood loss and worked out the percentage as 29. So much for the second method adopted by them.

28.23. The third method was of random checking and in this connection they examined 71 trees but unfortunately they have not given, as they did when examining 27-Budrambal, the serial number of the trees and the nature of the rot so that one might have an idea of the trees selected, so that we do not even know if all the trees examined by them were of the trees marked "fit". They have annexed a note in which they have classified the stumps examined by them into three categories partly rotten, wholly rotten and fit. They say they had examined on the whole 56 deodar trees and they found that 22 were partly rotten, 17 were wholly rotten and 17 were fit. Out of the 15 kail trees examined by them 3 were found partially rotten, 8 wholly rotten and 4 fit. On the basis of this sample checking they arrived at 59% as the rot present in deodar and 69% in kail and averaged to 64% on the whole. In considering that 64% of the whole was effected by rot they excluded from consideration the circumstance that as against over 4 lakhs cft. of deodar there were only 45,000 odd cft. of kail in the total volume of the trees marked fit and that deodar was at least twice as valuable as kail. The next step was to strike an average of these three figures—56, 29 and 64—to reach the figure of 50%. Then they deducted in the first instance 15% of unfit stuff marked in the markings, but in, however, arriving at this percentage they really took the usual average and not the figures of unsoundness disclosed by the markings for the marking list (Document 2) disclosed that as against a total 3,79,042 cft. of green standing deodar marked fit, the unsound etc. stuff of this species is 43,010 cft. yielding about 10% rot while as against green fit standing kail volume of 48,079 cft., those marked unfit etc. had a total volume of about 36,665 cubic feet. which would yield in the case of kail over 45% and if these have to be averaged on the basis adopted by the Forest officials, the unfit stuff marked would average about 28%. But anyway, they first deducted 15% but then went on to add back a portion of the 15% which they said it was not proper to deduct because there were still in the forest 10,000 cft. feet of deodar and kail felled or standing which might be taken to be almost unsound. For this reason they allowed only 13% for trees marked unfit and arrived at a net rot percentage of 37.

28.24. Lastly, they referred to a list of fit trees which they say had been submitted by the lessees which on actual felling had turned out to be unsound. It looks as if this is not the list of the 211 trees which the firm had submitted earlier but a new list, and this second list is not to be found in the files though it is stated that the territorial staff checked this list and found that the rot percentage was 42%. The average of 37% and 42% was then arrived at and the final figure of 40% was taken. They added, however, that the volume sold by the firm must have contained a good proportion of rot and this had not been taken into account, thereby suggesting that they had left enough margin for any error in their calculations. Pausing here, I should add that in his representation which led to all this enquiry and report (Document 10 dated 31st December, 1958) the lessee had claimed only that 30% of deodar and 40% of kail had suffered by rot and he is not likely to have made an understatement. This was completely ignored along with his list (Document 16).

28.25. Though somewhat out of its turn, it would be convenient to examine before proceeding further, one of the points raised by the respondent in his defence, as it is pertinent to the subject of the correctness

of the percentage of rot estimated by the Commission of Officers. In the course of his reply the respondent submits here as in Allegation 29, that the method of random sampling was the only proper method for arriving at the rot percentage, and that properly speaking the Commission should have estimated the rot at 64% less the deduction of 13%, i. e. 50% and that they erred in reducing the percentage. I cannot agree. No method could be as satisfactory as an examination of all the stumps, coupled with a checking of the outturn figures. I agree that this might not always be possible or convenient. The next best would be an examination of the logs at various points and make the deduction necessary to allow for the outturn from trees marked unfit being included in the examined stuff. It is only where these methods are not possible, that I can conceive of the random sample checking method having to be utilised. Even when the method is used, to say that it is reliable is really a half truth, for it depends upon the number of the trees taken as samples, how the samples are selected, and lastly, certain other factors which have also to be taken into account. For instance, if one takes just one or two stumps and they are found to be either fit or unfit, or one fit and the other unfit, it would mean either a 100% fit or unfit or a 50% unfit, all the three of which would be wholly misleading. Again, if the samples are chosen in just those areas of the forest where rot is prevalent or even more prevalent than in others, the percentage derived would not yield a correct picture of the entire compartment. The samples, therefore, would have to be taken from different areas representative of different soils or climatic conditions. And lastly, there is another factor, namely, that the rot which might be found in the stump might have started from below so that the upper portion of the tree might be normal and yield good timber. Conversely also, the rot might have started from the top and might not have percolated to the stump. These last are factors which have to be taken into account to moderate the estimates reached on the basis of stump checking even if the same were properly chosen and representative. What I have been at pains to point out is that in the method of random sampling on which the respondent so much relies advertence has to be made to several factors which are calculated to distort the figures. There can be no doubt either that if a check were made of all the stumps like in Document 39 later we would have got a picture nearer the proper one than if they are based upon a random sampling, because the larger the number of samples taken, the chances of the error being eliminated are more.

28.26. But the reply of the respondent which by no means suffers from brevity, does not suggest any answer to the question as to why the evidence furnished by the lessees claiming as not only 210 trees out of 2300 which they had felled up to the end of April, 1960, does not accurately portray the extent of rot, assuming that the 210 were really rotten.

28.27. But as I stated, the correctness of the result yielded by random sampling depends upon the manner in which the samples have been chosen and I have had occasion to comment upon the manner in which these samples were chosen by the members of the Commission when they inspected the compartment 27-Budnambal. Having regard, however, to the fact that they have not chosen to include in their report regarding 9-Rajwar a list of the trees which they had examined, I am unable to say whether the samples were properly chosen or not.

28.28 It was the case of the Government that some of the officers who constituted the Commission, particularly the Conservator of Forests, had been sent for by the respondent and instructed to inflate the loss so as to benefit his brother Ghulam Nabi, but as the officers have not been called as witnesses, I am not accepting this part of their case. But that, however, does not affect my comment about the manner in which the percentages have been worked out, which as already stated were at each point calculated and were apparently intended to exaggerate the rot percentage. It might very well be that the officers considered that they would please the respondent and obtain favours from him by doing so but this by itself would not prove that the inflation up to this point had been achieved by abuse of power on the part of the respondent, though it conferred an improper and an unjust benefit on Ghulam Nabi.

28.29 When this report of the Commission was received by the Chief Conservator, this was among the leases on which he made his recommendations to the Government. After pointing out that the bid was high and that on the finding of the Commission there was abnormal rot, similar to that in the compartment 28-Mawar, the Chief Conservator had this to say about the findings of the Commission—

"The Commission of Officers comprising of two Conservators (the Conservator of the Circle and the Forest Utilization Officer) and the concerned D. F. O. have conducted intimate sifting with regard to the incidence of rot They are of the agreed opinion that the extent of rot in this case is 40%. Looking to this as well as to the basic speculative royalty rate mentioned above.... I recommend a remission in royalty to the extent of 30% viz. Rs. 6,78,300 which is a bare minimum."

In regard to the erratic and high bid it may be recalled that in the application filed by the lessee which started these enquiries (Document 10 dated 31st December, 1958) there was no reference to the bid having been too high or erratic. Again, when this tender was recommended for acceptance the Conservator of Forests wrote (vide Document 4 in Allegation 29) —

"The highest offer works out to Rs. 5.35 nP. per cft. standing deodar. The offer is reasonable and is recommended for sanction."

It may be pointed out that the highest tender received for compartment 43-Hamal in the same Langet Division worked out to Rs. 5.15 nP. per cft. deodar standing which was also recommended for sanction as reasonable and there was no claim for remission of royalty made nor allowed in regard to that lease. When Document 4 was forwarded to the Government by the Chief Conservator of Forests by his letter (Document

5 in Allegation 29), he said —

"As explained by the C. F. Kashmir, the offers received for all leases are reasonable."

Besides, a comparison may also be made with what the Chief Conservator Mr. Firdous had to say on receipt of the application for enquiry into abnormal rot which was forwarded to him by the Government. In Document 20 already referred to he wrote to the Conservator asking him for an enquiry and report, but in the same letter he added—

"Please take all reasonable precautions to effect maximum recovery of royalty dues by enhancing royalty share even if necessary to the extent of full sale proceeds".

So that, at that stage evidently he was not considering that there was anything wrong about the bid which required modification by way of drastic reduction. Reference might in this connection be made to the correspondence that passed between the lessee and the Divisional Forest Officer Langet regarding the outturn from the trees in this compartment for the purpose of fixing the royalty already extracted, which would show that apart from the outturn from the trees marked fit, even those marked unfit yielded quite an amount of useful and marketable timber.

28.30 When this report of the Chief Conservator (Document 29) reached Government, Mr. Nag had this to say about this lease. Purporting to set out the findings of the successive officers, Mr. Nag said—

"The Committee assessed the rot at 40%. C.C.F. agreed with the findings of the Commission placing rot at 40% but recommended remission at 35% on the original royalty of Rs. 22,61,000." (vide Document 30)

28.31 Pausing here, it would be proper to remark that the recommendation of the Chief Conservator of Forests was wrongly stated as suggesting a remission of 35%, whereas in fact he had suggested only 30%. In fact he had gone further and had quantified the remission he recommended, namely Rs. 6,78,300. Mr. Nag, however, was not content with this. After the passage in which he quoted or rather misquoted the Chief Conservator of Forests as recommending 35%, Mr. Nag in an effort to calculate the amount of rebate allowable said—

"Applying the formula on which rot percentage, and relief for others have been calculated relief in this case should be granted at 30% of the original lease value of Rs. 22,61,000 which comes to Rs. 7,00,910."

Why he miscalculated seeing that the Chief Conservator had calculated the sum at Rs. 6,78,300 from which he was working out these figures, is anybody's guess, but the fact remains that though he correctly stated here the rot percentage, he misstated the amount as Rs. 7,00,910 instead of Rs. 6,78,300, working it out to 31%. The Finance Department did not make any specific recommendation in regard to the leases other than the seven which are set out in Document 31 in Allegation 29, but laid down the principle on which relief ought to be granted, which was that the reduction in royalty should not exceed 80% of the percentage of rot found and that this should be confined to cases where the royalty bid was high, i. e. Rs. 5.52 and above. The Forest Department had, therefore, to work out the actual percentage of relief allowable. In the case of this lease, in the memorandum which he prepared for submission to the Cabinet for sanction (Document 31) Mr. Nag however recommended the grant of relief of Rs. 7,02,000 on account of the incidence of rot so that he went one better than his original note to the Finance Department (Document 30) and added another Rs. 1,000/- odd to the amount of relief to be granted. In the tabular statement prepared for him on 6th March, 1963 (Document 37 in Allegation 29) Mr. Nag retained this figure of Rs. 7,02,000 though he correctly stated there that the recommendation by the Chief Conservator of Forests was Rs. 6,78,300 and his previous note (Document 30) did not purport to take into account any further factors for increasing the relief. This was placed before the Cabinet, was approved on 23rd March, 1963 and finally resulted in a Government Order (Document 32 dated 28th May, 1963). This shows the amount of care that was taken at the meeting of the Council of Ministers in distributing favours at the expense of State revenues.

28.32 Before proceeding further I shall complete the examination of the submissions made by the Government as regards the inflation of the rot percentage in the case of this lease. It will be seen that the inflation, if any, took place at three stages. The first is when the figures of the sound and unsound logs of deodar and kail were corrected in Document 26 after which they were fair-copied (vide Document 27). By reason of this the percentage of rot in deodar was increased from 15% to 56%. As regards this manipulation of figures and the fabrication of this document the case of the Government is that it was the Divisional Forest Officer who was responsible for these corrections being made. There was no suggestion that the respondent had any hand, directly or indirectly, in getting these figures altered. There could, therefore, be no case of an abuse of power so far as the first manipulation is concerned. I have, however, to state that I am satisfied that Document 26 has been fraudulently altered and faircopied as Document 27 and the alterations have been deliberately made to benefit the lessee. It was primarily by reason of this alteration that the Committee were able to

reach the figure of 40% by striking at an average arrived at by several methods.

28.33 The next stage is when the Commission took the matter in hand. Mr. Khanna, learned counsel for Government submitted that even the setting up of the Commission was as a result of the intervention of the respondent who sent for the Chief Conservator and directed him to see that proper and adequate remissions were granted to Ghulam Nabi in regard to his leases and that it was as a result of these instructions that Mr. Firdous conceived of the plan to set up the Commission which was designed to inflate the rot percentage.

28.34 I do not agree that Government have come anywhere near establishing this. I find from the files that one of the Conservators of Forests who had to deal with claims by a lessee other than Ghulam Nabi who had complained of excessive rot, made a suggestion to the Chief Conservator that as there were a very large number of such cases, it would be proper and desirable to have the matters thrashed out by a detailed examination at a high level and it looks to me as if the Conservator acted on this and like suggestions by other officers and constituted the Commission and not with a view to confer any particular advantage on the relations of the respondent.

28.35 It was next urged that after the Commission was appointed the respondent sent for Mr. Beg, the Conservator of Forests and others and instructed them to see that proper and adequate relief was afforded to his brother Ghulam Nabi. These officers have not been called for examination and I do not, therefore, accept their statements. I have, however, in the course of my observations regarding the manner in which they arrived at the rot percentage in the case of the lease of 27—Budnambal (Allegation 29) as well as of 9—Rajwar pointed out that they had adopted fanciful methods to arrive at higher percentages ignoring facts and matters which they had taken into account in the case of the other leases. Besides, for the random sampling on the basis of which a higher percentage has been determined in 27—Budnambal the trees seem to have been selected not quite at random but after some examination, so that in fact they were not random at all. Because of lack of data, it is not possible to say if this also happened in 9—Rajwar. Though these might be corroborative of the respondent having influenced them if there was documentary material to hold that there was such interference, in the absence of any such material I am unable from these circumstances alone to infer the case of an instruction or a direction by the respondent. On the other hand their action is consistent with their attempt to please the respondent by showing favours to his brother. Though, therefore, by reason of the methods adopted by them the rot percentage has been inflated and thus Ghulam Nabi has derived undue relief, I hold that this has not been established as being due to the misconduct or abuse of power on the part of the respondent.

28.36 The next stage is when the matter passed through the Chief Conservator. This officer made no deliberate errors in respect of this lease but merely accepted the percentage of rot worked out by the Commission. There are no doubt other cases in which he has disagreed with the Commission and accepted the estimate of a lower percentage by the Divisional Forest Officer, but in the case of this lease that did not happen. I have no material on which I could draw an adverse inference against him on this account. His recommendation of Rs. 678,300 merely proceeded on the basis of the figures arrived at by the Commission.

28.37 The next stage is when the matter came up before the Government and where we have the note of Mr. Nag. I have pointed out his misleading summary of the note of Mr. Firdous as well as his recommendation to the Finance Department in which he suggested a figure beyond what the Chief Conservator had recommended though not purporting to do so. When finally he drew up the memorandum to the Cabinet he suggested that sanction might be accorded to a remission of Rs. 7,02,000 ignoring the recommendation of the Finance Deptt. It is not clear how this figure was arrived at. There was, however, no suggestion that Mr. Nag was influenced by the respondent, though undoubtedly he managed to put into the pockets of the lessee about Rs. 25,000 over what Mr. Firdous had suggested and which was supposed to be given effect to.

28.38 The net result of the above discussion is—
(1) that the entire sum of Rs. 7 lakhs odd which was allowed to the firm was unjustified because on the basis of the original figures in Document 25 no relief could have been allowed as they disclosed no abnormal rot and the other methods adopted were obviously designed to arrive at inflated figures of rot; and
(2) that the Government have not been able to establish that it was by abuse of power of the respondent that this pecuniary advantage accrued to the firm of Messrs. Ghulam Nabi Haji, Noor-ud-Din.

28.39 Before concluding I must add that this firm has besides a remission of Rs. 7,02,000 for abnormal rot, been allowed remission of Rs. 1,26,418 for loss sustained by the floods in July 1959, but there was no suggestion, by learned counsel for the Government about the justness or the propriety of the allowance of this remission of flood loss.

Lease of Compartments 53b, 54a & b, South Lolab

28.40 I shall next proceed to deal with the case of the Government as regards the other lease to the same firm namely of 53(b), 54(a), and 54(b), South Lolab in Kamrai Division. I have already pointed out that this was among the

leases in respect of which tenders were invited in October-November, 1958. The last date for the receipt of the tenders was 5th November, 1958 and the highest tenderer was Ghulam Nabi Haji Noor-ud-Din, the amount tendered being Rs. 20,11,000. This highest tender was recommended for sanction by the Conservator of Forests and the Chief Conservator and was sanctioned by the Government by their order (Document 7 dated 14th November, 1958) and in pursuance thereof an agreement was executed between the Government and the lessee, though for some reason there was delay in the execution of the agreement, which was on 19th February, 1959 (vide Document 9), but nothing turns on this. The work order, however, was issued on 27th November, 1958 from when the lessee started working. Though in respect of the lease of 9-Rajwar, the lessees had presented a petition to the Forest Minister on 31st December, 1958 complaining of excessive rot, there was no such petition as regards the compartment covered by the present lease. It may be pointed out that by that date, as per the felling list for the month ending 15th December, 1958 prepared on 17th December, 1958 (vide page 35 of the Range File of the compartment Volume I) the lessee had already felled over 400 trees and had converted over 300 of them into logs. Felling on a vigorous scale proceeded during 1959 and 1960 also, and by April, 1959 more than 1200 trees had been felled. No complaint was, however, made of any abnormal rot being found in the trees marked 'fir'. For the purpose of calculating the royalty payable before the timber was removed from the forest, a test check was made by conversion of trees marked 'fir' and 'unfir' and according to an elaborate calculation made by the Range Officer in his report dated 7th October, 1959 (vide Range Officer's File Volume II, page 18) it was found that deodar yielded 125% outturn while in the case of kail and fir, the yield was 120% and 119%. In other words what was calculated as 100 cft. standing, was found on conversion to be 125, 120 and 119 cft. respectively of the three species of wood which will be some indication that the trees in the compartment were healthy.

2841 When dealing with the other lease of 9-Rajwar, I have pointed out how when offers were made by the Department to investigate the complaint regarding excessive rot (vide Documents 10-13), the lessee evaded and that nothing further was heard till the middle of July, 1960, i. e. after nearly 1½ years subsequent to the date suggested by the Divisional forest Officer, for an inspection by him of the stumps. On the same day as that on which the enclosure to Document 14 complaining of excessive rot in compartment 9-Rajwar was forwarded, i. e. on 14th July, 1960, a copy of it but re-typed with the description of the leased compartment being changed, was presented to the Minister in charge of Forests (Document 34). This was forwarded by the Deputy Secretary in the General Department which dealt with Forest matters)

to the Chief Conservator of Forests just like Document 14. The Chief Conservator on his turn sent the application to the Conservator on 4th August, 1960 for immediate report who sent it to the Divisional Forest Officer, Kamraj for early report (vide Document 36). As the Department officials took some time, the lessee wrote a letter to the Chief Conservator of Forests desiring information as to what happened on their petition (Document 37). I might add that in the case of Document 14 also a reminder was sent to the Chief Conservator of Forests by the Deputy Secretary possibly on receipt of Document 37 asking for expedition. When this reminder was passed on to the Divisional Forest Officer he wrote to the Range Officer that he desired to inspect the coupe himself before the final recommendations were made (Document 38). The Range Officer having inspected the coupe we have his report in Document 39 dated 9th October, 1960. He appears to have made a thorough inspection of the stumps, having examined as many as 408 stumps, 71 in compartment 53 (b), 53 in compartment 54(a) and 284 in compartment 54 (b). In his report he has annexed the list of the trees he had inspected together with his observations on the type of rot found in each. As a result of this inspection he found that out of 3445 trees marked "fit" in the three compartments, 408 trees had turned out unfit on felling and subsequent conversion. The volume of timber involved was 82,152 cft. and this was the total of all the three species—deodar, kail and fir. I shall now give the figures of the total volume of the timber of each species marked fit standing, both green as well as dry as per Document 4 — the tender notice — which had been checked up by the lessee before taking delivery of the coupes. Deodar green fit standing of a girth of 18" and over was 2,75,159 cft. while deodar trees of girth between 12" and 18" were 10,075 cft. The dry fit standing of these two girths was 9,178 cft and 2,914 cft. respectively. These make a total of 2,97,326 cft. as the approximate volume of deodar "fit". For kail the figures were: green fit of 18" and over girth 24,182 cft. and of the smaller girth 4,960 cft. Dry fit of the two types was 269 and 62 cft. respectively. The total was 29,473 cft. approximately. For fir the figures were green fit standing over 18" in girth 1,51,113 cft. and less than 18" 3080 cft., totalling 1,54,193 cft. I shall now give the break-up of the figures of the unsound timber from trees marked fit as found by the Range Officer, South Lolab and recorded in Document 39. For deodar it was 42,901 cft., for kail 2,348 cft. and for fir 36,903 cft. It is the total of these three items that came to 82,152 cft. This would yield 14% in the case of deodar, 8% in the case of kail and about 23% in the case of fir. On receipt of this report the Divisional Forest Officer desired the Range Officer to send him a list of the unsound logs lying in the depot. This was furnished by the Range Officer (Document 40) who reported that there were 752 logs at the depot. He further stated—

' Over and above this existing stuff the lessee has despatched

a good quantity of the 2nd rate unsound stuff both to Srinagar and Doabagh saw mills. Approximately as per the lessees' basic record in this respect this contains 15 to 20% cft. approximately which can be verified at Parmipora saw mill." (I understand the officer to say that 15 to 20% of the stuff there was unsound.)

The Range Officer further requested that if necessary, early verification on spot may be done before the lessee disposed of the stuff from the depot.

28.42 On the basis of this information and figures obtained from the Range Officer the Divisional Forest Officer submitted his report to the Conservator on 20th October, 1960 (Document 41). In this report after setting out the terms of the tender, the Divisional Forest Officer stated that it was not possible to report at that late stage the exact position of the unsoundness in the coupe since a major portion of the converted stuff had been removed. Out of a total launching of 2,30,561 cft. of deodar, of 25,680 cft. of kail and of 48,039 cft. of fir making a total of 3,04,280 cft. the unsound volume found at Doabagh was 10,625 cft. of deodar, 3050 cft. of kail and 5125 cft. of fir. He then referred to the timber despatched to the Parmipora saw mill and repeated what I have already set out from the Range Officer's report, namely, that 15% to 20% of this was unsound. He added that an attempt was made to verify this at Srinagar but as the unsound logs have already been sawn this could not be done. though the record maintained by the saw mill staff indicated an abnormal percentage of rot in the stuff sawn. I must here add that the stuff here examined — at the depot and at the saw mill — included the timber obtained not merely from trees marked fit, but also from those marked unfit. Besides, so far as the timber at the saw mill, there had been no differentiation between the three species and, therefore, no inference as regards abnormal rot among trees marked "fit" could be drawn from these figures. He then referred to the inspection by the Range Officer South Lolab of trees of the three species as a result of which 408 trees were found unsound of a total volume of 82,152 cft. He also referred to the lessees having sustained severe losses by the floods of July, 1959 and without specifying his estimate of the rot percentage suggested such liberal remission as might be deemed proper by the authorities.

28.43 On receipt of this report the Conservator after setting out in brief outline in Document 19 dated 1st December, 1960 the report of the Divisional Forest Officer and the Range Officer which I have already summarised, stated as his opinion—

"It does not seem possible to work out the exact position of rot of these leases at this late stage but this fact that there has been some rot cannot be denied. The

rot has been worked to 15 and 12% approximately for Kamraj and Langet leases respectively by the DFOs concerned."

adding that the lessees had besides suffered flood losses. As regards his views regarding the exact rot percentage, this report is not very helpful except that he did not seem to differ from the Range Officer and the Divisional Forest Officer as regards the extent of rot. Then, as in the other case, the Chief Conservator forwarded a copy of the Conservator's letter to the Deputy Secretary to Government stating that usually they took no notice of rot to the extent of 10% to 15% in a lease and as the lessees had practically removed all the outturn it was not possible to ascertain the overall position to arrive at a correct estimate of the rot percentage. (This could only be on the basis of his agreeing with the estimate of the territorial forest staff.

28.44 Though he had expressed himself thus, this was one of the cases of the leases referred to the Forest Commission by Document 21. The report of the Commission is Document 45. After giving a description of the nature of the soil and other climatic factors, the Commission started by stating that rot was prevalent in the compartment and though it was present in fit, it was normal being between 15% to 20%; adding that the markings were conducted by certain individuals whom they named but made no adverse comment upon the nature of the markings. It is from paragraph 3 onwards that they gave their reasons for their findings about the rot and as learned counsel for the Government advanced serious criticism about their reasoning which he submitted was deliberately erroneous and misleading, I have to refer to these reasons in some detail. They started the paragraph saying—

'Immediately after starting the work in this coupe the lessees are reported to have informed the Department about the abnormal percentage of rot. They submitted a list of such stumps which had been marked fit but on fellings have turned out unsound. This list was checked by the territorial staff and the DFO Kamraj submitted interim report vide his No. 4/c dated 20-10-60. At that time the lessees had not completed the fellings and the percentage of rot could not be correctly determined.'

I have already pointed out that though they had started working as early as the last week of November, 1958, it was only in July, 1960 that for the first time they complained of abnormal rot being found on felling trees marked fit. No doubt in this complaint (Document 34) there is a statement that the Divisional Forest Officer and the Conservator had personally been apprised of the facts and both of them were fully satisfied, but as I have pointed out when dealing with the

other application in relation to 9-Rajwar (this I have already stated was merely a carbon copy of the other) that there is nothing in the files to support this statement and this particularly when seen in the light of the circumstance that even in respect of very trivial matters requests are made by them in writing and are found in the files. Beside, at least in the case of the lease of 9-Rajwar there was Document 10 on 31st December, 1958, but in the case of this lease, Document 34 of July, 1960 was the first complaint that is in the files.

28.45 The next sentence in the Commission's report about the lessee submitting the list of stumps for examination is also wrong because when in pursuance of their application (Document 34) an enquiry into the rot percentage was directed and the Range Officer proceeded to the spot for inspection, he refers to no list having been given to him by the lessee. The reference to the manner in which he selected the stumps as seen from his report (Document 39) completely negatives the case of any list having been submitted before the Commission was appointed. Their next statement that that list was checked by the territorial staff and the Divisional Forest Officer Kamraj submitted an interim report dated 20th October, 1960 is equally not supported by the files. The report dated 20th October, 1960 referred to is Document 41. There is no reference here to the lessees having submitted any list but the Divisional Forest Officer merely sets out the figures of stumps which on fellings turned out to be rotten, the figures being the same as those in the report of the Range Officer as in Document 39. Besides, a representative of the lessee is stated to have been present at the time when these 400 odd stumps were inspected. This is stated in the affidavit of the Range Officer and is not denied by Ghulam Nabi in his reply. The suggestion, therefore, that the report of the Divisional Forest Officer Kamraj (Document 41) justified the finding which they were going to record as regards the rot percentage is without any basis.

28.46 Again, it is stated that at that time the lessee had not completed all the fellings, but it would be seen from Document 39 on which the report of the Divisional Forest Officer dated 20th October, 1960 referred to by the Commission is based, that all the 3,445 trees marked fit in the three compartments had been found to have been felled by the date of the inspection. If one look into account only original markings as per the Marking Lists (Document 3) there were only 638 trees of the three species marked fit including not merely the green but the dry and fallen as well, in compartment 53b, 804 such trees in compartment 54a and 1652 in compartment 54b, making a total of 3094 trees, marked fit. It, therefore, appears to me that the 3445 trees marked fit referred to by the Range Officer in Document 39 included all the trees marked fit, those originally marked and those covered by supplementary markings. For the Commission to say that he had not completed the fellings can be understood,

if the same were based on facts, only in the sense that a few trees marked unfit or had fallen had not been cut or converted

28.47 Proceeding next to paragraph 4, the Commission stated that during their inspection the lessees furnished the list of the remaining fit trees which had turned out unsound on felling. No list of these trees is annexed to the report, nor is any to be found in the files of the Department. Then in paragraph 5 they arrive at the total volume of the stumps which had been marked fit but which turned out unsound on felling. The figures of unsound stuff they give are for deodar 1,54,000 cft., this as against 42,901 cft. which is the figure arrived at by an inspection of all the trees found unfit on felling up to the first week of October, 1960 (Documents 39 and 40). How or wherefrom they got this figure of 1,54,000 cft. is not explained in their report. Coming next to kail, the unsound stuff which they estimated as being that from trees marked fit but which turned out unsound on felling, is stated as being 1,17,000 cft. This has to be compared with 2,348 cft. which was the figure arrived at by the Range Officer and concurred in by the Divisional Forest Officer in Documents 39 and 40. The total fit volume of kail in all the three compartments 53(b), 54(a) and 54(b) was, as I have stated earlier, only 29,473 cft., as per Document 4. This, as I have stated, included both green and dry standing trees marked fit. In the face of this how they got 1,17,000 cft. (unless it was a typing mistake for 11,700 cft.) as unsound kail passes one's comprehension and is indicative of their having drawn their figures freely from their imagination. Coming to fir, they estimated the unsound stuff out of the trees marked fit at 68,332 cft. (as against 36,903 cft. which was the figure arrived at by the Divisional Forest Officer in Document 39). In regard to fir I should recall their remark in paragraph 2 (supra) extracted earlier, in which they said—

"The rot is also prevalent in fir but here it is normal say from 15 to 20%,"

Notwithstanding this they arrived at 44% of rot in fir. On the basis of these figures they arrived at 52% as the rot in deodar, 40% in kail and 44% in fir and as usual averaged these and reached the figure of 45, though according to their original statement the lessee ought not to have been awarded any compensation for excessive rot in fir. The result of their calculation has been that the lessee was held entitled to 40% compensation in regard to fir also. For not making any allowance for the unfit stuff the reason they gave was that these were figures based upon such fit volume as had turned out unsound. In other words they claimed to have examined the stump of every felled tree, examined its markings and found that it had been marked fit

but disclosed rot in the stumps, though in the process they discarded Document 39 which had proceeded actually on a computation of this type. In the last paragraph they took pains to point out that these figures could not be checked on the basis of the outturn because the entire stuff had been removed from the forest and for this reason they allowed a 5% reduction and estimated the rot as 40%.

28.48 An even more serious defect in this report was their failure to take into account the details of the stuff which alone was claimed by the lessees themselves to be unsound in the several lists which they filed in which they specified the serial number of the particular logs which were found to be unsound. These were when the lessees made successive applications for the issue of F. 25 permits for the removal of the converted stuffs from the Forests. The lessees had according to the rules to furnish lists of the logs numbered serially with the marking of the lessee hammered on each log, differentiating between the three species of timber and specifying the volume in cubic feet of each log. The rules required that these lists should be physically checked up with the logs by the Range Officer and it was only after he furnished a certificate that he had checked the stuff that an F. 25 form was issued by the Divisional Forest Officer permitting their removal from the forest. In making these requests from time to time for the issue of these permits, the lessee in the case of the present lease had specified in most of the applications the volume of unsound stuff in each lot not merely in general terms, but specifying the particulars as to why they were unsound, i. e. as affected by ring rot, or centre rot, or pith rot etc. and setting out the number of the log which was so affected. All these several applications which ranged between the period 26th March, 1959 to 23rd June, 1962 are to be found in the files of the Range Officer, only the list containing logs bearing numbers 5769 to 6598 being missing. These logs which are numbered start from 1 in the list in March, 1959 and end in 27796 in the list filed on 23rd June, 1962. There are 15 of these lists in the file and in seven of them the lessee has himself shown which logs were unsound so that we have a definite data originating from the lessee himself to ascertain the percentage of rot. Two of these main lists have been filed as Document 51 (the original files regarding these and the others being filed with the Commission) and the Government have filed the affidavit of Mr. Ghulam Ahmed Naqash, a Range Officer, who has referred to all these lists and he has worked out the figures of sound and unsound volume disclosed by these lists and has determined the percentage of rot claimed by the lessees themselves at 6%. He has further included in an annexure to his affidavit a summary of the figures disclosed by these several lists. As the lists which were checked, have under the rules to be forwarded to the Divisional Forest Officer for the issue of the F. 25 permits and as the documents show that they have been so forwarded (the lessee has to file three copies of these lists), the Divisional

Forest Officer must presumably have been aware of the total outturn from the forest as well as the classification by the lessee himself as to the volume which was claimed as unfit. Still it was the Divisional Forest Officer who as a member of the Commission of Forest Officers took part in the rechecking conveniently ignored these figures and inflated the rot percentage so as to help the lessee.

28.49 In the statement of the case filed by the Government they drew attention to the contents of Document 51 and to the lessees' own statements regarding the volume of rot prevalent in the compartments (vide paragraphs 31 and 32 (3) of the statement of the case). Ghulam Nabi in his reply does not dispute the correctness of the figures in Appendix 'A' to the affidavit of Mr. Naqash which are taken from the lessees' own lists, nor does he say that they were either unreliable, mistaken or irrelevant. What, however, he actually says is rather interesting and so I cannot do better than make an extract of the relevant sentences from paragraph 32 of his reply-

"If the Chief Conservator of Forests did not peruse the various log lists submitted by the respondent, it is no fault of the respondent. The Chief Conservator of Forests does not say that he did not peruse these in order to show favour to the respondent but because he trusted the report of three senior officers in regard to which even when he is prepared to give an affidavit against his own recorded notes, all that he has to say is I cannot give any comments on it."

28.50 By way of illustration I might refer to some of the figures in relation to the total volume launched as shown by the lists filed by the lessee and the volume claimed by him as unsound in these launchings taking these at intervals of about a year to show the absence of any substantial variation between the initial, intermediate and later fellings. On 26th March, 1959 the respondent applied for permission to remove from the forest 32,310 cft. of timber converted into logs (vide page 96 of Range File Volume I). Of this 29,274 cft. were deodar and 4,365 cft. were stated to be unsound. In kail the total of the volume sought to be removed was 2,632 cft., out of which 152 cft. were claimed to be unsound and in fir out of 431 cft. 42 cft. were claimed as unsound. Taking next the figures of the launching during 1960, I shall take again by way of illustration an application for permission to remove filed by the lessee on 15th March, 1960 (vide page 50 of Range File Vol. II). Here, 1,80,884 cft. of timber was sought to be removed. Out of 1,37,121 cft. of deodar, 3,127 cft. were claimed to be unsound, out of 11,573 cft. of kail 280 cft. were claimed as unsound and out of 32,190 cft. of fir, 114 cft. were claimed as unsound. Again proceeding to the next year, at the end of March, 1961 we have an application for removal of timber which had been felled and converted (vide page 45 Range

File Vol III) and this was granted on 4th June, 1961. Out of 47,545 cft. of deodar, 3,856 cft. was claimed as unsound. Out of 4,785 cft. of kail 144 cft. was claimed as unsound and in fir the figures were—total volume 13,184 unsound 803 cft. The figures of launchings in 1962 do not disclose any different picture. On 28th March, 1962 permission was sought for removal of 19,935 cft. of deodar out of which 1097 cft. were claimed as unsound. Alongwith this 2311 cft. of kail and 18,566 cft. of fir were also sought to be removed. Of these 14 cft. of kail and 601 cft. of fir were said to be unsound. The volume, it should be added, included the fellings of trees marked unfit, which would show that quite a number of such trees yielded sound timber. These figures, regarding which there is no dispute, clearly show that the percentage of rot arrived at by the officers was manipulated with the intention of helping the lessee and that he thereby obtained an improper pecuniary advantage.

28.51 In view of what I have pointed out earlier, the criticism of the learned counsel that this report though ostensibly purporting to proceed upon Documents 39 and 40, in fact gave imaginary figures to justify their finding, appears to be well-founded.

28.52 On receipt of this report the Chief conservator of Forests in his recommendations to the Government started by pointing out that the bid was fantastically high though the lessees themselves had not urged this as a ground for relief by way of remission of royalty. It should also be pointed out that he had himself when forwarding this tender to the Government for their sanction endorsed the opinion of the Conservator of Forests regarding the amount tendered being reasonable and fit for being accepted.

28.53 He then proceeded to examine the case "critically". This critical examination proceeded on these lines The Total royalty offered was compared to the volume of deodar, kail and fir sold under the lease. He then proceeded to make a series of calculations with a view to demonstrate that at the rate of royalty mentioned in the tender of the lessee, the lessee was bound to incur a loss. For this purpose he calculated the outturn from the forest in this area on foot of the trees being sound and their quality good. The figures that he assumed as the outturn from the trees were—assuming there was no rot—100% yield in deodar, 80% in kail and 70% in fir. He then proceeded to assess the value of this maximum outturn at the market rates and after making an allowance for working expenses found that the gross revenue from the stuff after transport to Srinagar would be less than Rs. 13 lakhs. In other words, this would have meant a loss of about Rs. 7 lakhs to the lessee, and even after making an allowance of Rs. 1½ lakhs as a possible variation in favour of the lessee, the total gross income he would derive from the lease would not be more than Rs. 14½ lakhs as against Rs. 20 lakhs odd for which he had bid. In this connection, I might refer again to the lease of compartment 43 Hamal of the same year where the

royalty bid worked out to Rs. 5.15 per cft. deodar standing, where there was no application for remission. If Mr. Firdus is right, the lessee suffered loss, but bore it in silence without making any complaint. It was on the basis of this calculation that he considered that the royalty bid was very high and that because of the loss which the lessee was bound to suffer the Government should come forward to alleviate his condition by granting a reasonable proportion of the royalty as remission, and he worked out that the royalty bid for this coupe by the lessee was about Rs. 5,61,000 more than what was reasonable. To this he stated, had to be added the value of 74,000 cft. of timber washed away in the floods of July, 1959, the value of which was Rs. 4,22,760.

28.54 The calculations the Chief Conservator made here were incorrect and misleading but before dealing with them on the merits, it is proper to state that the whole approach to the question was seriously faulty. It would be noticed that on his reasoning relief would have to be afforded, even in the absence of unanticipated factors like abnormal rot on which alone this and the other lessees had rested their case for relief. Apart from the circumstance that he made these calculations only in the case of this lessee, though there were several other lessees where the tender rate per cft. deodar standing was nearly as high, relief on this basis would cut at the root of the system of the calling for tenders and the acceptance normally of the highest tender. The system proceeds on the basis of the tenderer himself calculating the profitability of the contract before making his bid.

28.55 If the Chief Conservator is right, whatever be the amount of the bid, the royalty demanded should have to be calculated after the tender was accepted so as to allow the lessee a reasonable profit and this without checking the lessees' books. I consider the suggestion too absurd to deserve more detailed discussion.

28.56 I shall now proceed to consider the correctness of these calculations. First as to the outturn percentage that was assumed: In or about September, 1959 the lessee approached the Divisional Forest Officer Kamraj to fix the royalty share payable by him for removal of the product from the forest. Under the terms of the contract this royalty share has to be fixed on the actual outturn. The Range Officer, South Lolab, was directed to conduct a sample analysis of a few trees to find out the exact percentage of outturn. The result of this examination is to be found in a report of the Divisional Forest Officer, Kamraj to the Conservator of Forests (vide pages 203-204 of the D. F. O. Kamraj's file). The figures worked out by the Range Officer after determining the actual volume of five representative trees belonging to the five diametric classes in the marking list was

as follows. In the case of deodar the difference between the volume as per the standard conversion table and the actual yield showed that the latter was 125% of the volume in log form. In the case of kail the yield percentage was 120 and in the case of fir 119. A copy of this report was forwarded to the lessee on 11th October, 1959 as seen from the endorsement on this document. The royalty rate was thereafter worked on the basis of 100%, 115% and 110% for deodar, kail and fir respectively making some allowance for a margin. On the basis of these computations the figure of royalty was fixed and there was no demur by the lessees to the outturn figures mentioned in this report. The Chief Conservator certainly knew that the outturn figures had been worked out because that was the normal and prescribed method for fixing the royalty and his adoption of the percentage, that he did for demonstrating that the lessee should have suffered a loss would appear to indicate that he had made up his mind to reach the result towards which he was working. Nor was any account taken of the trees marked unfit which would yield marketable timber though not always of the same quality as the fit trees. I have already referred to the outturn report regarding 9 Rajwar in which the Range Officer had pointed out that 60% of the trees marked unfit had yielded 50% sound timber.

28.57 If the basis on which relief should be granted was that the Government should make good the loss which the lessee suffered or would suffer by working the lease, there was nothing easier for him than to have called for the books of account of the firm and have them checked up for ascertaining the loss, if any, they had sustained particularly as by then a major portion of the trees had been felled, the cut trees converted into logs, a good part sawn and disposed of. In fact this was stated to be one of the reasons why an accurate estimate of the percentage of rot could not be determined. There was precedent for such examination of the account books of a lease, because when the firm of Tirath Ram as lessees of 29-30 Hamal approached the authorities for remission, they had stated that as a result of excessive and abnormal rot they had suffered a loss of Rs 2 lakhs. As seen from the report of the Conservator of Forests on this application (Chief Conservator of Forest's file 22 Volume II—page 125), the lessees were sent for by the Conservator who produced their accounts and the Conservator verified that they had suffered this loss of Rs 2 lakhs. In this connection, a curious feature should be referred to. On the basis of their calculations, the Forest officials estimated the lessee's loss at more than Rs 3 lakhs whereas the lessees had claimed only Rs 2 lakhs, and the lessees were asked to explain this. They pointed out that they had been able to sell some of the timber at higher prices and so had reduced their loss. After receiving this report from the Conservator, the Chief Conservator in his note to the Government suggested a remission of royalty to the extent of Rs 1,60,000.

28.58 In the present case these books of account were not summoned and when an attempt was made to get them for being examined by me, the answer was that they had been destroyed by reason of the arson in December 1963—January, 1964 when some buildings not of Ghulam Nabi but belonging to certain members of the family of the respondent were set on fire. Why these books of Ghulam Nabi should be there was of course not explained.

28.59 To resume the narration of the matters set out in the Chief Conservator's report, he proceeded after making these calculations and demonstrating the loss the lessee should have suffered, to deal with the incidence of rot and stated that the territorial staff put the rot at 20% in their preliminary report, the Commission had reckoned it at 40% after necessary "sifting". As I have already dealt with the "sifting" by the Commission, I need not comment about it again. On the basis of these calculations the Chief Conservator expressed himself as being "crystal clear" that the maximum royalty for the coupe should have been in the neighbourhood of 14½ lakhs and that on that ground the royalty should be slashed by Rs. 5,61,000. In addition he said there were other factors which had added to the misfortune of the lessee. First was loss by flood of timber valued at Rs. 4,22,760. Possibly this was the claim of the lessee which the Chief Conservator without any verification accepted as correct though when finally the loss by flood was computed, the loss allowed was Rs. 59,110 which would mean that the total loss was about Rs. 1,16,000 because the flood Commission, as already stated, allowed only 50% of the loss to be borne by the Government. The second factor which he considered was the presence of abnormal rot and unsoundness in trees marked "fir". This, as stated earlier, he accepted. His recommendation, therefore, was that in the first place the royalty should be reduced by Rs. 5,61,000 and on the reduced royalty of Rs. 14½ lakhs 20% should be remitted for the abnormal rot. Thus total of the remissions which he recommended was Rs. 8,51,000.

28.60 I have next to refer to what Mr. Nag did with this. In Document 47 which is the note prepared by him for being forwarded to the Finance Department he first disagreed with the suggested slashing down of the royalty on the ground that it would set a bad precedent but as usual by a different process of reasoning arrived at nearly the same amount of remission. He expressed his concurrence with the Chief Conservator in considering that the lessee deserved as much remission as possible and that the failure to slash down the royalty should be taken into account in otherwise computing the loss which he had suffered. His comments as regards the conduct of the lessee were all taken from the report of the Conservator and the Commission and in doing so he stated—

"The lessee took an early opportunity to inform the Department about this high incidence of rot in the

standing trees. They also gave a list of such stumps which had been marked fit but on felling had turned out to be unsound timber".

Then, without making any reference to the percentages revealed by the examination by the territorial staff he stated that 45% was the average rot of the three species and that to avoid over-estimation the committee had recommended 40% of the rot. He then analysed the report of the Chief Conservator and in doing so stated—

"The initial reports of compartments 51, 52 (A & B) and 53 (a) S. L. (South Lolab) (which he took for comparison) recommended 33% of 'rot' against 4% recommended for this coupe."

And he said this in the face of the Divisional Forest Officer's calculation of the rot as between 12% and 15%. He then proceeded to state that the Committee had fixed it at 40% and that the relief proposed by the Chief Conservator was Rs. 8,04,400, this being 40% of Rs. 20,11,000. In making this recommendation Mr. Nag stated that owing to the high bid it was not proper to deduct any percentage for normal rot. However, when finally he forwarded his proposal to Finance, he struck out the amount of relief proposed, but left the other parts of his note unaffected.

28.61 The Finance Department as already seen ruled that only 80% of the percentage recommended by the Committee should be allowed and annexed to their memorandum a list of seven leases of which the lease with which we are concerned was the first in which they said they would permit relief to the extent of 32% alone and this worked out to Rs. 6,43,000. The Forest Secretary Mr. Nag then prepared a memorandum for being placed before the Cabinet, the text of which was the same as the note to the Finance Department and in the final recommendation sanction of the Cabinet was sought for the grant of relief of Rs. 6,43,000 in terms of the recommendations of the Finance Department. In this case at least he was responsible for no further inflation. A Government Order was thereafter passed in terms of this Cabinet decision (vide Document 50). I have to mention that this Government Order was passed after it was ascertained that the lessee had qualified for the remission by satisfying the condition about the payment of 50% of the royalty after deducting the amount of the proposed remission before the 31st March, 1963. Now this completes the narrative of the facts in relation to the grant of relief in regard to this lease.

28.62 I have stated in broad outline the answer of the respondent. Closely, analysed the defence comes to this.

(1) There were numerous cases—as many as 173 during

1961 to 1963 are listed—in which remissions had been granted to forest lessees by the Government. The grant of relief was, therefore, nothing unusual and the fact that relief was granted to a lessee, though according to the strict terms of the agreement the lessee was not entitled to it, does not support the theory that the relief to Ghulam Nabi was granted as a matter of special favour, out of the ordinary course and, therefore, referable to favouritism or abuse of power on the part of Governmental authorities.

28.63 I agree with this submission but only up to a point. The instances quoted by the respondent and in regard to most of which I have perused the files, show that remissions have been granted as a matter of grace and out of the desire to assist lessees who put in honest labour and invested capital not to suffer unforeseen losses which would deter them from entering into future contracts. But this, in my opinion, does not offer any real answer to the charge which is that even though there was no abnormal rot and, therefore, though no loss referable to it, was suffered, yet by manipulation and fabrication of documents and by the exercise of pressure on the subordinate and superior staff of the Forest Department, exaggerated claims for losses suffered were recorded and thus a remission of royalty was granted not for losses suffered but merely in order to increase the profit which the lessee would have obtained even otherwise. I do not understand the respondent to suggest that in 173 cases which he has listed as an annexure to his reply were also cases where the remissions were improperly obtained or granted but even if they were—I cannot say that I have investigated them from this point of view, I should add that it is plainly not possible to do so—it is obvious that they do not afford an answer to the charge contained in Allegation 31. If they too were improperly granted, it would merely mean that dishonest reports by subordinate officials were common, but that would be no evidence of the propriety or correctness of the estimates of the loss incurred by the lessee in the leases now in question. It is for this reason that I have not thought it worthwhile to examine the instances quoted in any detail, even if time could be spared for this wholly irrelevant work.

(2) That rot and certain fungus diseases of the flora are common in these forests and with a view to establish this, the respondent has cited extensively from various reports. The inference he seeks to draw from these are, that if the territorial staff and the higher officers of the Forest Department found in the case of the compartments with which Allegation 31 is concerned the presence of abnormal rot, this should cause no surprise. This point he has sought to emphasise by making reference to the other 17 leases which were the subject of consideration by the Commission of Forest Officers set up by Mr. Firdous. In these other cases also the officers have found

the presence of quite an extent of rot and have suggested relief on that basis.

28.64 This is a more valid argument than that which I have set down as the first of his answers. But a close examination of these 15 other cases relating to stranger lessees, the result of which I have summarised in the tabular statement which I have included already, shows that though in the case of the other leases there is an attempt at every stage to minimise the rot percentage, in the case of the leases with which we are concerned in Allegation 31, the attempt is the other way - to exaggerate the percentage. Thus, for instance, in one of these cases - lease of compartment 13 Drangyari - which is referred to by the Commission of officers as a compartment comparable to 9-Rajwar, it was found that rot was more predominant in kail as compared to deodar. The relief recommended was confined to kail. In the present case I have drawn attention to the fact that though the Commission of Officers at the commencement of their report stated that the percentage of rot in fir was normal being 15 and 20%, still when they come to the computation of the rot percentage, they first recorded a finding that the percentage of rot in fir was 44% and then averaged the percentage of rot yielded by the other species as 45% and finally suggested a rebate even in respect of the royalty attributable to fir. I have not been able to discern any such discrepancy in the finding of the Commission or of the Chief Conservator of Forests in respect of the other leases. Again, in the case of the other leases where the averaging is done, it is no doubt done by taking into account the percentage of rot in the different species of timber. This type of averaging works there to the detriment of the lessee and in favour of the Government, because there the average in the case of deodar is high it is brought down by averaging it with the rot percentage of other species. This has happened in several of the other cases included in the 18 dealt with by the Commission. In the case of the present lessee, this kind of averaging has been to their advantage, having regard to the volume of deodar as well as the percentage of rot in it.

28.65 Lastly, about the manner in which the deduction has been made for unfit trees which had been felled, I have already pointed out that though a considerable Volume of the trees marked in these compartments were shown as unfit in the markings, no deduction was made for this unfit percentage and the reasons assigned for the failure to make this deduction which is normal and has been done in the other cases is, as I have pointed, fanciful.

28.66 The adoption, inter alia, of these methods together with the manipulation of the figures which I have examined in great details all point to the conclusion that the case of the leases in which Gbulam Nabi was interested was treated differently

with a view to inflate the percentage of rot or the degree of loss. The figures of unsound volume furnished by the lessee in his lists (Document 51) are ignored, and even the result of the extensive checking of over 400 unsound stumps (Document 33) is deliberately discarded and other figures worked out purporting to take into account other materials whose existence is shadowy and whose details are not specified for these the respondent has no comment to offer.

28.67 As one goes through these files one cannot resist a feeling that there is some conspiracy from the territorial staff upwards at each stage to find some basis or justification for adding to the profit of this lessee. This is quite in contrast with the very stiff and, what one might term, the usual official attitude when dealing with the complaints of or requests by other lessees. It is the presence of these factors that distinguishes the leases with which Allegations 29 and 31 are concerned from the others dealt with by the Commission and by the Chief Conservator of Forests.

(3) The respondent next totally denies

- (a) that he sent for or had any talk with the Conservator of Forests Mr. Beg, the timber Utilization Officer Mr Kaul or other staff or gave them directions to inflate the loss; and
- (b) that he did not send for and direct Mr. Firdous, the Chief Conservator of Forests to ensure that substantial relief was afforded to Shri Ghulam Nabi.

28.68 In accordance with the principle that I have followed, I accept the denial by the respondent regarding his having met or influenced the Conservator and the Timber Utilization Officer, and it would have been noticed that in dealing with the report by the Commission of Forest Officers I have made my position in this regard clear. No doubt these officers have in their affidavits stated that the respondent sent for them or happened to meet them and directed them to see that proper steps were taken to ensure that Ghulam Nabi obtained a decent amount by way of remission of royalty. I am not accepting these statements as material on which I would act, but as I have indicated earlier I cannot help expressing the feeling that though there is no material to hold that these officers have been influenced by the respondent, they have each by himself and all together done whatever lay in their power to inflate the loss. As the Range Officer and the Divisional Forest Officer have all been parties to the fabrication of documents such as we have in Documents 26 and 27, the members of the Commission, particularly the Divisional Forest Officer, could not be held to be blameless for this fabrication and manipulation. The result, therefore, is that though the Government have not been able to establish that there has been any interference by the respondent by way

of direction to the officers, the lessees have obtained a benefit which they would not have obtained but for these acts of misconduct on the part of the officers.

28.69 So far as regards the Chief Conservator of Forests Mr. Firdous, however, I am unable to accept the denial of the respondent that he never spoke to him regarding the report which he submitted to the Government. I have already explained why I am unable to do so, but on that account it would not follow that Ghulam Nabi obtained any financial benefit, because what the Chief Conservator did was merely to confirm the findings of the Commission of Officers and these latter had done all the inflation possible.

28.70 It now remains to examine two matters--

(1) Regarding the unjust financial advantage obtained by the lessee Messrs Ghulam Nabi Haji Noor-ud-Din; and

(2) whether the Government have been able to establish abuse of power or misconduct on the part of the respondent, and if so the amount of financial gain obtained by Ghulam Nabi.

As regards the first, I have discussed this question threadbare in dealing with the several documents on which estimate of rot was based, and finally I have referred to Document 51 which in terms is an admission by the lessee himself regarding the abnormally low rot percentage, since the outturn to remove which these applications were made in 1959, 1960, 1961 and 1962 included not merely the trees marked "fit" but also those which were marked "unfit". In view of this, I consider that the lessee was not in justice entitled to any remission of royalty on the ground of abnormal rot because the rot present was even less than normal. Hence the lessees obtained an unjust financial advantage to the extent of the entire remission of Rs. 6,43,000.

(2) As regards the other point, I have already stated that the Commission of Officers had estimated the rot at 40% and the Chief Conservator of Forests did not interfere with the finding as to rot percentage. But by a calculation whose merits and correctness I have discussed he suggested a remission of Rs. 8,51,000, as compared with Rs. 8,04,000 which the acceptance of the Commission's rot percentage would have yielded. This, however, was not the figure finally accepted. No doubt Chief Conservator's recommendation was endorsed by Mr. Nag, but as the proposal emerged from the Finance Department and accepted by Government the relief was granted only to the extent of 32% of the royalty (80% of 40%) i. e. Rs. 6,43,000. The net result is that by reason of the abuse of power on the part of the respondent Ghulam Nabi obtained no financial advantage.

29.1. The charges which remain to be considered may be grouped under three heads :

- (1) An undue favour to Mr. Mir Nasrullah, the respondent's son-in-law (Allegation 37) which stands in a class apart ;
- (2) allotment of house sites to the several members of the family listed in Part 'A' of Schedule I as well as to some of the other relations listed in Part 'B' (Allegation 12) ; and
- (3) charges of obtaining undue benefit to himself.

This last group comprises the charges contained in Allegations 35, 38, 36, and 34, mentioning them in chronological order. I have only to add that in Allegations 14 and 32 there were charges of the respondent having benefited himself personally by availing himself of the services of the contractor Abdul Gani Bhat on terms of inadequate payment and of having an electrical connection at the cost of the Government respectively. These have already been dealt with.

29.2. I shall now proceed to deal with these three groups in that order.

29.3. No introductory remarks are needed to explain the charge contained in Allegation 37 which is really self-explanatory. It reads thus :

“By the abuse and exploitation of the official position of Bakshi Ghulam Mohammad, his son-in-law, Mir Nasrullah obtained undue pecuniary advantage in that he received an allotment and delivery of a Fiat car from the official quota in 1959 and did not pay for this till 1964, though he had sold the car in 1960.”

29.4. As elaborated in the statement of the case, the points made in regard to this charge are—

- (a) that out of the State's quota a Fiat car was allotted to Mr. Mir Nasrullah the respondent's son-in-law on the orders or directions of the respondent even though there was no application or request by him for the purpose ;
- (b) that really Mr. Nasrullah did not need this car, as seen from the admitted fact that he sold this car even before the registration in his name was completed ; and
- (c) that though according to the rules and the practice every allottee of a car had to pay and paid its price before possession of the car was delivered, in the case on hand Mr. Nasrullah did not make the payment, nor was any demand made on him for such payment till the amount due was recovered from him in 1964 after the respondent ceased to be the Prime Minister.

29.5. Before proceeding further I might indicate the points which are not disputed and those which are in controversy :

- (1) That a new Fiat car was allotted to Mr. Nasrullah and that it was delivered to him in June 1959 is not in dispute, but what is in dispute is that it was allotted at the instance of the respondent. It is the case of the respondent that he had nothing to do with the allotment of these cars, which were obtained by the State from the manufacturers as part of the State quota and that the entire question of their allotment to officers was in the hands of the Transport Commissioner who made the allotments on principles evolved by him based upon the position and the need of the officer, and in regard to this the defence of Mr. Mir Nasrullah to whom notice was issued and who has filed statement in reply is practically the same.
- (2) It is not in dispute that the car was sold by Mr. Nasrullah in or about November 1960. He does not offer any explanation as to why the car was allotted to him if really he had no need for the car which he disposed of even before it was finally registered in his name. His only statement is an admission that he sold the car.
- (3) It is admitted that the price of the vehicle allotted to him and of which he took delivery in June 1959 and which he sold later and obtained consideration therefore, was not paid to the Government till 1964. The defence of the respondent is that he did not know about the non-payment and that if the amount was not demanded, it was not owing to any instruction on his part, while that of Mr. Nasrullah is that the bill for the price was not brought to his notice and that there were no demand or reminders till 1964 and that when a demand was made he immediately paid up the amount. He also places some reliance on certain documents which I circulated to the parties after my inspection of the original records, in which according to the ledgers of the Department there were other cases in which the outstandings in respect of the price of the vehicles sold to allottees were left in arrear for a considerable period, besides a few other documents to which reference will be made in due course. Basing himself on the documents circulated by me Mr. Nasrullah has raised the defence that if he was in arrear and no demand was made on him for the payment of the amount due from him, it was in line with the general lethargy of the Department and was not to be attributed to either his relationship to the respondent nor, of course, to any direction of the respondent or intervention on his behalf.

29.6. The first and primary point, therefore, to be considered is how the allotment of the Fiat car came to be made—whether there were any irregularities in it and whether the same was due to any order

or direction of the respondent as stated by the Government. Beside, however, referring to the documents which in my opinion convincingly establish that the allotment of the car was on the direction of the respondent, I shall briefly summarise the documents filed in the case in relation to (a) the allotment ; (b) the delivery of possession ; (c) the resale by Mr. Nasrullah ; and (d) to the recovery of the price due to the Government from him.

29.7. A new Fiat car was delivered to Mr. Nasrullah who was then Deputy Commissioner, Srinagar, on 18th June, 1959 (Document 1). No bill was sent simultaneously but a bill dated 28th August, 1959 bearing No. 3462 for Rs. 10,462.67 being its price was forwarded to him (Document 2) and this was an enclosure to a letter addressed to him in which the bill was referred to and early settlement and payment was requested (Document 3 dated 2nd September, 1959). That the bill with the covering letter was delivered to Mr. Nasrullah is proved by Document 4 which is item 12 on page 43 of the Peon Book of the Parts Department for 1959, in which this letter which is numbered 3546 is seen as having been delivered to him on 8th September, 1959. The delivery book shows that it was received by one Abdul Salam who was the receipt clerk of the Deputy Commissioner's office who has signed in token of receipt. I am making special reference to this document because one of the defences of Mr. Nasrullah is that this bill was never brought to his notice—a defence which I shall consider later.

29.8. The car having been delivered, Mr. Nasrullah desired it to be registered in his name and Documents 5 and 6 are in relation to this registration. Document 5 is a memorandum from the Transport Controller Mr. S. K. Raina to the Traffic Superintendent directing him to register immediately the car in Mr. Nasrullah's name. Mr. Raina added that the necessary papers would be supplied by the Transport office at a later date. This is dated 26th October, 1959. The application for registration which is Document 6 is signed on behalf of Mr. Nasrullah by Bakshi Bashir Ahmed. The endorsement on this application is that the "particulars tally and that it is fit for registration under the rules" and is dated 2nd November, 1959 and the registration number to be allotted for the vehicle was specified as J&K 8484 and in the register of vehicles J&K 8484 was entered in the name of Mr. Nasrullah against the date 29th December, 1959 (Document 8) as the registration number of the vehicle of Mr. Nasrullah. Before, however, the registration could actually be effected, the rules require that the relevant papers, namely the document of sale or purchase, the octroi etc. had to be filed in the office of the registering authority. These were the papers to which Mr. Raina had referred when he forwarded the application for registration to the registering authority. These papers had still not been forwarded and so the Traffic Superintendent who was to effect the registration addressed on 24th December, 1959 Document, to the Parts Manager of the Transport Department to furnish these documents. This was replied to by the Parts Manager by Document 9 dated 11th January, 1960 who stated that these documents had been forwarded to the Deputy Commissioner, Srinagar from whom they might be obtained. After waiting for some time to see if the Deputy Commissioner i.e. Mr. Nasrullah would furnish these documents, and finding that they had still not been

received, the registering authority addressed the Deputy Commissioner by Document 10 on 19th February, 1960 requesting that these documents may be forwarded, so that the registration may be completed. Even by 15th December, 1960 these documents were not received and hence a reminder was sent on that date (Document 11).

29.9. While still things were in this state without the sale papers and other documents which were necessary to be produced to enable the registration to be finalised being produced, and while the registering authority was making frantic efforts to get these documents from Mr. Nasrullah, Mr. Nasrullah had sold the motor car which had been allotted No. J&K 8484 to Ghulam Nabi Kapra and had received the price in full. He addressed the registering authority on 17th November, 1960 (Document 12) informing him of this fact and requesting that the ownership of the car may be transferred to the said Ghulam Nabi Kapra, without stating either the date of the sale or the price for which he had sold the car. It will be recollected that he had not yet paid the amount of the bill which had been sent to him as early as 8th September, 1959. Along with this letter (Document 12) the form prescribed for effecting the transfer which requires the signature of the original owner as well as of the purchaser was sent up to the registering authority (Document 13), but curiously enough Mr. Nasrullah did not sign at the place indicated for his signature in the document (though the purchaser had signed it) nor was the column which requires the price at which the vehicle was sold to be stated, filled in, and yet on this form is an endorsement reading—

"Papers are in order—approved—Transfer may be entertained."

under the date 30th November, 1960. The vehicle was the subject of further transfers but to this it is unnecessary to refer.

29.10. Several months after the respondent ceased to be the Prime Minister a letter was addressed to Mr. Nasrullah by the Parts Manager (Document 15 dated 22nd June, 1964) reminding him of bill No. 3462 dated 28th August, 1959 for Rs. 10,462.67. Mr. Nasrullah wrote back Document 16 on 27th June, 1964 enclosing a cheque for Rs. 10,462.67 which was realised and the account adjusted. These exhaust the list of the documents filed to prove the transaction as distinguished from those seeking to establish the gravamen of the charge against the respondent.

29.11. I shall now proceed to consider the first of the three points which I have set out as those in controversy in this allegation. Before, however, doing so, I might usefully start by referring to the reply of the respondent and then of Mr. Nasrullah as regards how this allotment came about. The respondent states in paragraph 2 that he had no knowledge of the purchase of the Fiat car by his son-in-law through the Transport Department. "Such matters of supply or allotment of a car to a Government officer were within the competence of the Transport Commissioner, and so far as he can remember such allotments would be ordered by the Transport Commissioner whenever an officer made a requisition for supply or request allotment of a vehicle subject

to availability. In so far as he can remember no case of supply or allotment in favour of his son-in-law of a Fiat car or for that matter a car of any make was ever referred to him." Mr. Nasrullah's statement is this—

"This respondent (Mir Nasrullah) never sought the help or intervention of his father-in-law Bakshi Ghulam Mohammad for allotment or supply of the car from the Transport Department nor was any such intervention necessary as the Transport Commissioner was fully competent to allot cars."

It has, however, to be noticed that Mr. Nasrullah does not say as the respondent would seem to imply, that he made an application to the Transport Commissioner for the allotment of a car to him and in fact the files do not show any request by him for such an allotment. The first document that there is in respect of this transaction is the order for delivery dated 18th June, 1959, (Document 1 referred to already). If, therefore, Mr. Nasrullah did not make any application or request for allotment, the case of Mr. Nasrullah should be taken to be that the Transport Commissioner after satisfying himself by enquiry or otherwise that Mr. Nasrullah needed a car, allotted one to him on his own initiative. This would be rather strange and would not appear to be supported even by the practice that is referred to by the respondent himself.

29.12. If Mr. Nasrullah did not make a request to the Transport Commissioner for the allotment of a car to him, on whose suggestion then did he make the allotment, would naturally arise for consideration.

29.13. I shall now proceed to examine the files and the relevant one is file 671/PD/59 which contains the papers in relation to allotment of cars in 1959. Now the total number of Fiat cars which was received by the Jammu and Kashmir Government in the 1959 allotment, including both the regular quota as well as special one, was eight. These eight cars were allotted to—

- (1) Shri Narinder Sethi, Director, Radio Kashmir, and was registered as J&K 7661.
- (2) Raja Jaswant Singh, Advocate General, registered as J&K 7707.
- (3) Shri Dwarkanath, Secretary, General Department, registered as J&K 7857.
- (4) Mr. Masrullah, registered as J&K 8484.
- (5) Pirzada Ghulam Ahmed, Chief Secretary, registered as J&K 8400.
- (6) Shri M. H. Siddiqi, Government Architect, registered as J&K 8456.
- (7) Shri Datar Singh, Development Adviser to the Kashmir Government registered as J&K 8450.

- (8) One to the Government Transport Department, registered as J&K 8704.

29.14. I shall now proceed to set out from the files the efforts made, some successful, others not so, by several officers for the allotment to them of these Fiat cars and the manner in which these applications were disposed of and the part which the respondent took in this matter. Shri P. N. Madan, Director of Tourism addressed a communication on 7th February, 1959 (page 18 of the file) to Mr. R. C. Raina Private Secretary to the respondent stating that he had to be constantly mobile as the tourist season was approaching and added

"I would, therefore, request you kindly to beg the Prime Minister on my behalf to instruct the Transport Controller for allotment of a car 'Fiat 1100' to me out of the fixed quota. I would be grateful if you would be good enough to send me a line in reply.....to enable me to arrange funds for the purpose."

The noting on this letter is of some importance. It is marked to the "P.M." by his Private Secretary on 19th February, 1959 and the Prime Minister in his turn marks it to the Transport Commissioner, and the Transport Commissioner to the Parts Manager, and the reply of the Parts Manager which has obviously come from above is, according to the note—

"Say that there is no allocation made to this department and the supply position is still very tight and it may not be possible to make arrangement for supply of a Fiat car."

A reply was accordingly sent on 13th May, 1959 (page 19 of the file) explaining that the supply position was very tight. This was an unsuccessful application.

29.15. On page 22 of the same file there is a letter dated 30th March, 1959 from S. Datar Singh to whom one of the eight of that year's quota was allotted. It is a personal letter addressed to the respondent and in this he says—

"I wrote to you that my car in Delhi was very old and unserviceable and you were good enough to order the Transport Controller to allot me one Fiat car for which I gave a cheque to the Transport Controller on 20-2-1959 for Rs. 10,500/-.....After your instructions only 2 Fiat cars were received in February out of which one car was allotted to the Advocate General and the other to the Press Representative (Narinder Sethi) and the Transport Controller told me that I will be given the first priority when the second batch of two cars arrives.....The Transport Controller tells me that two cars will be arriving in the next few days but you have given him 6 names in which my name does not appear (underlying mine, but this chit in which the six names were specified is not available on the file), I think there seems to be some misunderstanding because the Transport Controller had promised one of these two cars to me."

I hope you will kindly see that one of the two cars is allotted to me."

(I may at this stage point out that the two cars of the second batch were allotted to (a) Mr. Dwarkanath, and (2) Mr. Nasrullah).

This letter was marked by the respondent to "T.C.". Mr. Datar Singh followed this up by a personal letter to the Transport Controller bearing the same date 30th March, 1959 (page 24 of the file) which he winds up in these terms—

"I hope you will kindly get the Prime Minister's orders and allotment of one of the two cars you are expecting in the next few days and will deliver that car to me at Delhi as promised." (Underlining mine)

Ultimately on 9th December, 1959 a Fiat car was allotted to Mr. Datar Singh not out of the consignment then received but from a later consignment.

29.16. On page 26 of the file there is a letter dated 28th November, 1958 from S. Datar Singh addressed to Mr. S. K. Raina, Transport Controller which reads—

"Enclosed please find the sanction of the Prime Minister for allotting me a Fiat and I shall be glad if you will kindly let me have one from the first lot received."

(A car was reserved for S. Datar Singh on 18th November, 1959)

29.17. On page 29 of the file is a letter addressed by Shri Siddiqi to whom a car was allotted on 11th November, 1959 and later registered as J&K 8456. On 16th February, 1959 Shri Siddiqi writes to the Transport Controller—

"Kindly refer to the verbal approval of the Hon'ble Prime Minister who has kindly agreed and spoke to you for allotting me a car from the Government quota."

Later he refers to the amount of advance he has paid and desires to know the amount, if any payable by him.

29.18. The Chief Secretary Pirzada Ghulam Ahmed had evidently made an application earlier and the request for the allotment is repeated in a letter addressed to him to the Transport Controller at page 54 of the file. He had enclosed a cheque for Rs. 11,000/- to meet the price of the car reserved for him from out of the Government quota, adding that he hoped he would get the car by the 22nd October as promised by him. A car was allotted to him on 18th November, 1959 on

which date also the reservation was recorded of one vehicle for S. Datar Singh (see page 57 of the file).

29.19. The correspondence which I have extracted between Mr. Siddiqi and the Transport Controller and between S. Datar Singh and the respondent, particularly the latter, would show that the statement by the respondent that he had nothing to do with the allotment of cars is not true. The reference to the six names which were stated to have been given by the respondent to the Transport Controller for the allotment of the cars taken along with the fact that the two cars received earlier had already been allotted, would make out that he had given directions for allotment in respect of the cars which were expected to be received in that year. I have already pointed out from the dates of allotment that out of the two cars then received and in regard to which allotment had already been made — one of them to Mr. Nasrullah — and this allotment has to be viewed in the light of the reply to the request of Mr. Madan, Director of Tourism who was told that owing to the tight supply no vehicle could be allotted to him notwithstanding it was recognised that having regard to the duties which the Director of Tourism had to perform the possession of a car was an absolute necessity for him. In view of the conclusion that I have reached on the basis of the letters on the file, I do not think it necessary to examine the correctness or truth of the statement of Mr. Nasrullah that he did not approach his father-in-law for the allotment of a car and that the Transport Commissioner was competent to make the same. It does not matter very much whether the respondent made the order for the allotment at the request of Mr. Nasrullah or even without such a request. As Mr. Nasrullah has not stated in his reply that for the proper performance of the duties of his office he had need of a vehicle, I do not propose to examine the question as to whether he had any other vehicle which he could use and as to whether there was any real necessity for him to obtain an allotment.

29.20. In regard to this, however, there is one matter to which reference must be made since it has a bearing not merely on this question of need, but also on the third point regarding the non-payment of the price. Earlier I have set out the documents in relation to the registration of this car which show that the car, the delivery of which was obtained in June 1959 was sold in November 1960 and even before the formalities in connection with the registration of the vehicle in the name of Mr. Nasrullah had been completed by the essential documents like the sale note and the octroi receipt being produced. The only object of the sale of the car appears to me to obtain the maximum profit from the difference between the price for which he was able to purchase the vehicle and owing to the restricted availability of these vehicles for the general public, the very high price that it would have fetched in the open market and it is in this aspect that one notices that in the application for recognising the transfer and entering the name of the transferee in the register of vehicles, the price on which the vehicle was sold is not set out, nor does it appear even in the covering letter which Mr. Nasrullah wrote to the registering authority. One, therefore, gets the impression that the purpose of obtaining the allotment was just to effect the sale of the vehicle at a profit after using it for some time.

29.21. The last of the questions arising in respect of this allegation is the non-payment of the price for nearly five years. As regards this, the case of the Government is that the Transport Department did not press Mr. Nasrullah for the payment because he was the respondent's son-in-law and they were directed not to do so. The respondent in his reply denies this and states that he did not even know that Mr. Nasrullah owed any monies to the Department and there was, therefore, no question of his directing anyone not to demand the sums. Mr. Nasrullah states that the bill for the payment was received in his office, but as no reminder for the payment was sent, the matter escaped his attention and when in 1964 the payment was demanded he paid the same.

29.22. That the first bill (Document 2) was received in his office which is proved by the entry in the Peon Book (Document 4) is not denied. Mr. Nasrullah's statement of the receipt of the bill is rather ambiguous, namely as to whether he personally knew of its receipt or whether he admits merely the receipt of the bill by one of his staff. But since he does not say that the bill and the covering letter were not handed over to him by his subordinates, I shall have to proceed on the basis that they came into his hands. The covering letter (Document 3) did require him to make payment at an early date. Mr. Nasrullah was a responsible officer and for a man of his position I am utterly unable to understand why he should expect a series of reminders before he need make a payment. Besides, I do not believe him when he says that he was not aware that the price of the car had not been paid. It is much too naive, if not childish, an explanation to deserve credence. He was using the car every day and he could not have forgotten that he had not paid its price. He was certainly aware of the demand by the registering authority of documents which included the sale papers, and they were not being supplied. I cannot for a moment believe that when the sale papers were being called for, he was not aware of their nonexistence, because he had not yet paid the price. These apart, in November 1960 he had sold the car and received the price and at that stage at least, even without a reminder from the Department he must have known that he had not yet paid its price to the Government. I, therefore, do not find any extenuating circumstance or acceptable explanation for the non-payments of the price by Mr. Nasrullah.

29.23. Relying on certain documents I circulated to the parties, and certain others to which reference will be made later, Mr. Nasrullah has raised a contention that there was no rule that payment of the price of cars should be made in advance, or even on delivery. The debits shown in the documents I circulated have been proved to have been wrong and Mr. Nasrullah is not correct in stating the rules as they prevailed. It should be noticed that in his case the Government had already paid the price to the supplier. That the price of the vehicles that were allotted was collected even before delivery and that as a matter of practice and principle that cars were delivered only against payment is seen from several papers in this file. For instance, on page 8 of this file is a letter from the Jammu and Kashmir Motor Corporation (agents for Premier Automobiles through whom the supplies were effected)

to the Transport Controller. It is a bill by the company for the price of vehicles supplied. It contains an endorsement dated 21st April, 1959 by the Parts Manager which reads :

“The Fiat cars may be *given* to other department or officer at Jammu *against* payment of Rs. 10,463.”

To the same effect is another letter dated 18th November, 1960 at page 271 of the same file from Mr. S. K. Raina, Transport Controller to Mr. Lakshmi Rattan, Accountant General, Jammu and Kashmir, Srinagar stating that a car will be available in about a month and a half's time. “You will, therefore, arrange to remit Rs. 11,433.15 to the Transport Department towards the delivered cost of the unit at Jammu so that the car is reserved for you.”

29.24. Now, as regards the Fiat cars allotted in 1959, payment of their price was made in the manner to be set forth. Mr. Narinder Sethi had deposited an amount of Rs. 10,500 long before the delivery of the car to him and a letter on page 20 of the file is by the Parts Manager to the Deputy Transport Controller requesting that the balance after adjusting the price of the car may be refunded to the purchaser. Raja Jaswant Singh states in his letter dated 19th September, 1959 (page 46 of the file) that he took delivery of the car after payment by cheque of Rs. 10,500/- which was more than the price of the car and on page 47 there is a direction to the Deputy Transport Controller to arrange to refund the balance due to Raja Jaswant Singh, Advocate General. Mr. Dwarkanath paid Rs. 6,120/- to the Transport Controller on 9th February, 1959 more than a month before the car was delivered to him and the balance of Rs. 3,783/- was paid by him to the Firm Jay Kay Motor Corporation directly at the time when he took delivery. Mr. Siddiqi who was allotted the car in November 1959 had deposited with the Department Rs. 7,500/- in March 1959, but he withdrew this amount in June of that year and made the payment direct to the dealer Jay Kay Motor Corporation at the time when he took delivery. Pirzada Ghulam Ahmed, the Chief Secretary, whose allotment order is dated 18th November 1959 forwarded a cheque to the Transport Controller on the 17th October, 1959 (page 54 of the file) stating—

“I enclose herewith a cheque for Rs. 11,000/- drawn in your favour to enable you to meet the cost of the car that you have reserved for me from out of the Government quota.”

The car was delivered to him much later. S. Datar Singh to whom a car was allotted in December 1959 had deposited with the Transport Controller on 20th February, 1959 Rs. 10,500/- as seen from his letter dated 30th March, 1959 to the respondent already referred to vide page 22 of the file. This cheque, however, appears to have been misplaced by the Transport Department as seen from a later part of the same letter and he, therefore, sent a new cheque with stop instructions to the Bank in regard to the previous cheque. The new cheque was sent to the Transport Controller on 30th March, 1959 vide page 24 of the file and thereafter there was only a question of the excess having to be refunded to him. The eighth car was reserved for the Department and, therefore,

there was no question of any payment. The cost of all these vehicles had been paid for by the Department by 30th March, 1959 as is seen from the bill of Jay Kay Motor Corporation at page 45 of the file. It would thus be seen that in respect of all the other cars allotted in 1959, payment had been received much earlier or at least before delivery. The question naturally arises why this payment was not insisted on. Three explanations are possible—

- (1) That this was done on the direction or the suggestion of the respondent.
- (2) That the Transport Controller knowing of the relationship between Mr. Nasrullah and the respondent did not think it prudent to insist on payment.
- (3) That just like Mr. Nasrullah "forgetting" about what he owed, the Transport Department officials had similarly a weak memory or were lethargic, inefficient or negligent in collecting the outstandings due from the parties, the third alternative being the one suggested by Mr. Nasrullah.

It is the first alternative alone that would constitute misconduct on the part of the respondent, but in order to draw this inference, there is nothing in the files and there is no other material other than statements in affidavits which I discard, from which such a conclusion could be drawn. This leaves the second and third alternatives, but I consider the second as the one to be preferred, because it is that which is consistent with the facts.

29.25. To establish the third alternative Mr. Mir Nasrullah called for the production of certain records from which he seeks to show that there were several other officers from whom large outstandings were due and which remained uncollected for considerable periods of time and that, therefore, this non-collection of the dues from him is not to be attributed to his personal relationship to the respondent but to the general inefficiency or negligence of the Transport Department, in the matter of collection of outstanding dues.

29.26. The first of them is a letter from the Parts Manager to the Financial Adviser and Chief Accounts Officer (FA & CAO) dated 12th February, 1963 referring to the amount of outstandings due from four officers. It refers first to a sum of Rs. 452.13 being due from the Zonal Commandant of the N.C.C. Rifles at Srinagar. The cost of the jeep had been paid, but that of the spares which were supplied later was not paid for and it recites several reminders to the officer to remit the sum. (2) The second officer from whom an amount was due was said to be the Finance Secretary who had paid a sum of Rs. 500/ towards his dues but left over Rs. 1100/ odd outstanding in connection with which five reminders had been sent but no reply had been received. (3) The third was the Chief Secretary Pirzada Ghulam Ahmed to whom it was stated no bill had been issued (I have already pointed out that no amount was due from him), and (4) lastly Justice Nayar (a former judge of the High Court) is referred to and as regards him it is stated

that a bill already issued might be treated as cancelled because he got no vehicle from the Department. On the reverse of this letter the details of these cases are set out and a need for further examination is indicated. I do not see how this helps Mr. Nasrullah, because it shows that in cases where amounts were due, reminders were being repeatedly sent, for the absence of which in his case he offers no explanation in his reply if the document on which he relies affords any precedent. Besides it should be noted that items 3 and 4 alone referred to the price of cars allotted to officers being in arrear, and in both these cases, there was a mistake as is pointed out in the discussion on the reverse of the document, that there was a small balance owing from the Chief Secretary whose origin which is fully explained in the next document to be referred, and that in the case of Mr. Justice Nayar the debit was erroneous because no car was delivered to him.

29.27. The second document relied on by Mr. Nasrullah is a letter from the FA & CAO to the Parts Manager in reply to Document 1. It contains the result of the examination by this Accounts Department which after confirming the amounts due from the Zonal Commandant and Mr. P.N. Chadku explains how a debit came to be made against the Chief Secretary. Against a price of Rs. 10,447.04 for the car allotted to him he had paid in advance a sum of Rs. 11,000. When the office was directed to refund the balance to him, they refunded by mistake Rs. 174.04 in excess. The Parts Manager was directed to explain the position to the customer and recover the same. In the case of Mr. Dwarkanath against a sum of Rs. 10,462 due from him for the car, he had made an advance payment of Rs. 3,783 and paid to the company Rs. 6,120 and this left the balance of over Rs. 500. It was suggested that the matter may be pursued and recovery made. Next we have the case of Mr. Nasrullah to whom, it states, a car had been delivered. Even the date of delivery was not intimated and the case was put up to the Transport Controller for orders. It is only to be noticed that notwithstanding this, there were no orders issued by the Transport Controller for the recovery of this price and, therefore, negligence or lethargy could not be a possible explanation for their failure to make a demand. The next is the case of Justice Shahmiri to whom an Ambassador car was delivered and it shows that he had made payment in advance of Rs. 13,600 leaving a balance of Rs. 271, and lastly we have the case of a Superintending Engineer in Water Works, Jammu from whom a sum of Rs. 400 odd was due. I do not see how this document helps Mr. Nasrullah. For one thing his own seems to have been the only case where the whole of the price has not been received in advance or at the time of the delivery of the car and secondly, notwithstanding that the Financial Department required the case to be pursued and a demand made, the Transport Controller had taken no action and that it was only in 1964 long after the respondent ceased to be the Prime Minister that a demand (after the first bill) is made for the payment of the outstandings.

29.28. The office notings in Document 1 and 2 referred to by Mr. Nasrullah have some significance in the light of his defence. The office note at page 11 of the file (No. 3/A of the office of FA & CAO)

which Mr. Nasrullah has required to be produced reads in relation to him--

"An amount of Rs. 10,462.67 as already intimated represents the cost of one Fiat car debited to the account of the above officer on 1-3-61....."

Since the payment of the car by the officer concerned was abnormally delayed, it was suggested in this office letter referred to above (Document 3 at page 25 of File No. 3/A) that "the case be put up to the Transport Controller. So far it is not known whether the needful was done or not. It is also not known whether any demand for payment of cost of the said car was made and subsequently followed with the officer at your end. Date of the delivery of the car has not so far been communicated to this office (FA & CAO) which may please be done now. On receipt of this letter the matter should please be taken up with the officer concerned and the amount recovered under an intimation to this office. In addition to the above, an amount of Rs. 205.03 representing repairing charges as per your bilis is also recoverable from Shri Nasrullah."

29.29. Document 4 which Mr. Nasrullah desired to be produced is a statement showing outstandings on account of purchase of vehicles against seven officers submitted to the Public Accounts Committee on 23rd February, 1965. This statement lists several officers as persons from whom outstandings were due. The books of account and other details in relation to the amount outstanding against these officers have been placed before me, but before examining them it might be useful to explain the exact nature of the transactions and certain other circumstances. The vehicles for which these debits were raised were used ones in regard to which most of these officers had been in possession for their official purposes and which under certain Government orders, they were permitted to purchase at prices to be fixed. In the case of Mr. Syed Ahmed Shah, Superintendent of Police, the first in this list, the vehicle was handed over to him on 26th July, 1962 while its allotment by which he became the owner was on 29th May, 1963. The second, Mr. Sheikh Aslam was also a Superintendent of Police and he was given possession of the vehicle on 3rd October, 1962 and the sale to him by allotment was on 29th May, 1963. Commandant Ghulam Jeelani the third, was given possession of his vehicle on 5th June, 1963 and the allotment order to him is dated 12th July, 1963. The fourth Mr. Noor Mohd who was a Deputy Commissioner was given the use of the car on 10th November, 1962 and the allotment to him was by a Government Order dated 29th May, 1963. Mr. Mohd. Sultan the next officer was a Superintendent of Police to whom the jeep was delivered on 22nd March, 1963 and the sale to him was effected by Government Order dated 29th May, 1963. The sixth officer, Mr. Amar Singh was given possession of the car on 25th May, 1963 and he was allotted this jeep of which he became owner on 12th July, 1963. The last of these Mr. G. H. Kirmani was given possession of the car on 27th June, 1963 and by a Government Order it was allotted to him on 12th July, 1963. I am mentioning this for the purpose of clearing the ground for it should be seen in all these cases there was no question of payment of the price before delivery as in the case of the new vehicles.

29.30. I shall now proceed to narrate the manner and circumstances in which the allotment and sale of these second-hand vehicles took place, as well as to why the price remained unpaid. On the 7th May, 1962 at a meeting of the Cabinet it was decided that Ministers should send to the Cabinet the names of persons whose duties in their opinion required them to be mobile (page 3/correspondence of File TR 302/52/ii Home Department). The Chief Secretary was thereafter requested to get framed lists of such officers and have the lists passed on for submission to the Cabinet. Lists were accordingly drawn up based on the recommendation of the head of each Department and thereafter jeeps of which they were already in possession were allotted to them. A Government Order was issued pursuant to the earlier Cabinet decision and this read—

“Sanction is accorded to the sale of Government vehicles of the State Garages Department in favour of the officers listed in the annexure to the order at the costs indicated against each subject to the condition that the cost is paid by each officer in one instalment.” (vide page 41 of the file).

There was a further clause in the Government Order which referred to the grant of motor car advance in favour of the officers equivalent to the amount admissible under the Motor Car Advance Rules for purchase of new vehicles. In the annexure to the Government Order the vehicle number and the make of the jeep were set out along with the mileage run, as also the price originally paid and the price to be charged. Several of the officers made payments, some in full, some in part, some not at all. The grounds upon which those who did not pay or pay in full and resisted the payment were two : (1) That the prices fixed were not reasonable having regard to the damage which the vehicles had suffered by reason of the user previous to the sale and (2) they claimed to deduct the motor car advance to which they said they were entitled against the price payable by them. In regard to the first ground we have, for instance, a communication from the Secretary to the Home Department to the Transport Commissioner on page 34 of File TR 302/52(ii) dated 6th February, 1963 in which a list of officers has been given who had made a representation to the Prime Minister for the assessment of the prices fixed for their vehicles. He added—

“The Prime Minister has... desired that you may please examine the representations enclosed in original ...and send up your remarks at an early date.”

Similar representations were received by various departmental heads from several of these officers. I might here refer to a representation which is typical. Mr. A. S. Khanna, Deputy Commissioner Poonch was allotted the jeep J & K 7573 which had run 14589 miles and the price fixed for the vehicle was Rs. 8,020. He wrote on 7th February 1963 to the Secretary, Home Department vide page 38 of the file (TR 302/52) that the jeep had been used on rough roads and that the arbitrary fixation of the price based merely on the mileage was unfair. He suggested, therefore, that the price for his vehicle should not be more than Rs.5,000 in any case. He desired that this representation might be brought to

the notice of the Hon'ble Prime Minister so that the price might be reduced. Again, as regards the claim to deduct the price against admissible motor car advance, this would be seen from a noting at page 44 of the same file reading—

“The officers to whom the jeeps have been sold now will have to wait for the grant of Motor car advance till the next financial year. The Finance Department may kindly be asked to earmark funds for the said officers in the next year's provision.”

This is dated February 1963. This was because the funds during the then current year had already been utilised. I might here point out that Mr. Nasrullah was one of the officers to whom such a jeep was sold (J & K 7404). On 22nd March, 1963 Government decided that in regard to officers to whom car advance was available only the balance of the price after deducting the car advance was to be recovered (page 59 of the file).

29.31. The several representations which were received for re-assessment of the price were placed before the Cabinet and a resolution was passed on 12th April, 1963 by which the Prime Minister was authorised to fix the price of these cars (page 62). Even before this, when representations were made to him regarding the high price fixed, the respondent seems to have given them an assurance that the price would be fixed taking all relevant matters into consideration and that the running life of the jeep might be taken as eight and not ten years as had been originally assumed (vide page 71 of the same file). It was on 1st June, 1963 that these prices were re-fixed and by a Government Order 123-C of 1963 (page 126) the rules for the grant of motor car advance were liberalised so as to make them applicable even in cases where person were not entitled to the advance under the then existing rules. Mr. Nasrullah from whom in respect of J & K 7404 a sum of Rs.7,426 was due was listed as one of such persons from whom amounts were due. A letter from the Deputy Transport Commissioner to the Secretary, General Department dated 8th July, 1963 at page 139 of the file shows that though 32 officers to whom vehicles had been allotted under a Government Order dated 29th May, 1963 had been repeatedly asked to remit the amount to the Department, they had not made any payment and several of them had not even acknowledged the communication addressed to them. Mr. Nasrullah was one of those officers referred to in this letter. The difficulty, however, still was that the particulars of officers to whom motor car advance could be made available, having regard to the language used in the order liberalising the grant, were not yet clear and that is why even by 8th October, 1963 there were still 31 officers in whose cases the entire cost or part thereof had not been recovered (see page 196 of the file, item 13 of this list is Mr. Nasrullah). The Motor Car Advance Rules were finalised and some sort of order was arrived at by an order of the Finance Minister set out on page 199 of the file. After making these allowances the Finance Minister suggested that stringent steps must be taken to recover the amount due from these officers. It was because of these factors that there were some officers from whom amounts were still outstanding for the sale of these jeeps. It may be pointed out that Mr. Nasrullah paid for the jeep only in 1964

and it is to be noticed that the non-payment of the sum due for the jeep is not the subject of any charge against the respondent.

29.32. In the light of these facts I do not see any point in the reference to these seven cases in Document 4 referred to by the respondent as affording any analogy to the case of the non-payment of the price of the Fiat car which is the subject of Allegation 37. I would only add that the case of the arrears due from officers for the price of jeeps does not show any negligence on the part of the Transport Department staff in making demands or insisting on payment, though here again I must say that though there were threatening letters of demand addressed to several of the officers, none such was sent to Mr. Mir Nasrullah.

29.33. Even in regard to these seven cases I have examined the books and find that in the case of Mr. Ahmed Shah the entire amount due was paid on 19th October, 1964 partly out of the motor car advance and partly in cash. In the case of Mr. Sheikh Aslam Rs. 2,000 were paid on 7th September, 1964 and the entire amount was discharged by 17th July, 1965. In the case of Mr. Ghulam Jeelani by 24th February, 1965 the entire amount was paid. In the case of Mr. Noor Mohammad the debit against him seems to be incorrect because between October 1962 and February 1963 the entire amount due from him was deducted from his salary. In the case of Mr. Mohd. Sultan the entire amount due from him was paid by 17th December, 1965. In the case of Mr. Amar Singh the amount was not paid since he was arrested on 19th September, 1964, and lastly in the case of Mr. Kirmani the entire amount was paid by 8th January, 1965.

29.34. What remains for consideration is the documents which I circulated to the parties as *prima facie* affording some defence to the respondent. These relate to—

- (1) The allotment and sale of a Fiat car to L. Dwarka Nath, Secretary to General Department to whom bill No. 3461 for Rs. 10,462.67 was issued on 2nd September, 1959.
- (2) A Fiat car supplied to Raja Jaswant Singh and to whom bill No. 3463 for Rs. 10,431.78 was issued on 2nd September, 1959 for payment.
- (3) The sale to Justice Nayar of the Jammu and Kashmir High Court to whom a bill No. 3464 for Rs. 10,431.78 was issued on 2nd September, 1959.

The amounts due from them as per these bills have been entered in the ledger and as they were shown to be still due at the end of 1961, I

considered that this had some relevance to the question whether there was a discrimination in favour of Mr. Nasrullah in the matter of payment of the price of vehicle supplied to him by the Government. An examination of the books and other papers in relation to these transactions afford satisfactory explanation that the entries in the books debiting these officers with the price of the cars as if due from them are erroneous and in fact they had been rectified subsequently. Thus, in the case of L. Dwarka Nath to whom a bill was made out and was despatched on 2nd September, 1959, he was found to have paid Rs. 6,120 to the Transport Commissioner on 9th February, 1959 as advance for the purchase of this car and Rs. 3,783 directly to the firm at the time of delivery. In the case of Raja Jaswant Singh to whom a bill was sent for the entire price on 2nd September, 1959, it was found that he had paid by a cheque a sum of Rs. 10,500 to the Transport Department on 28th February, 1959. So far as Justice Nayar was concerned, it is found that really no car was supplied to him by the Government and that the entire bill was a mistake. When the question of this outstanding amount was raised by the FA & CAO and was examined by the Department, it was found that really no car had been supplied and that the debit raised against him was incorrect. How these entries came to be made and these bills were drawn up is not clear to me, but anyway it does not reflect upon the efficiency of the Department, but that is another matter not relevant to the present inquiry. It is, therefore, clear that none of the documents or files on which reliance has been placed by Mr. Nasrullah afford him any assistance.

29.35. Now, to summarise the result of the above discussion, my findings in respect of this charge are—

- (1) The first part of the charge regarding the allotment of the Fiat car to Mr. Mir Nasrullah by the respondent is made out.
- (2) The second part of the charge, namely that the car was allotted to him without payment of the price owing to the abuse or exploitation of the official position of the respondent is not made out, but what is made out is that Mr. Nasrullah improperly took advantage of his position as the close relation of the respondent and managed to retain the benefit of not paying the price so long as the respondent remained in office as the Prime Minister of the State.

29.36. By reason of the improper allotment of the car to Mr. Nasrullah, the latter was enabled to sell the car in the open market and thus net a handsome profit. He has not disclosed the price at which the car was sold but having regard to the price of these cars in the open market I would not be erring on the wrong side if estimated that the vehicle would have been sold at a profit of at least Rs. 5,000 above the amount for which he was billed. Besides, he has had the advantage of having the funds of the Government to the extent of over Rs. 10,000

with him for nearly 4½ years and even at 6%, the benefit that he derived on this head would be Rs. 2,700, though this again is not to be attributed to any misconduct on the part of the respondent.

30.1. I now come to the charge relating to the improper allotment of house sites which is the subject-matter of Allegation 12. The Government of India formulated a Low Income Group Housing Scheme as part of the Second Five Year Plan and this was communicated to the State Governments by a letter dated 15th January, 1955. The purpose of the letter was for adoption by the State Government of the Scheme with such modifications as they might desire. The Government of Jammu & Kashmir decided by a Cabinet resolution embodied in Government Order No. 218-C of 1955 dated 10th March, 1955 that "in view of the acute housing problem the advantage of the scheme may be availed of." A request for a long term loan of Rs. 30 lakhs and a short term loan of Rs. 5 lakhs for development was made to the Government of India. The Cabinet further decided that the scheme should, in the first instance, be worked in the cities of Srinagar and Jammu and might be extended to other cities in the light of the experience gained and the availability of funds. It was also decided that to start with the benefit of the scheme should be restricted to Government servants having permanent appointments or appointments likely to continue for periods longer than five years, but later they extended it to employees of local bodies and commercial undertakings administered and controlled by the Government. For working out the scheme a committee was set up consisting of the Prime Minister as the Chairman with the Deputy Planning Minister, the Chief Engineer, Commissioner, Director of Local Bodies and Finance Secretary as members. The Committee was to select and specify four suitable areas for the purpose of housing in Jammu and Kashmir.

30.2. The Board thus constituted, however, ceased to function after 22nd April, 1958 though no specific orders were passed for effecting its dissolution. Thereafter the powers for the grant of allotment of plots as well as for the sanction for loans for house building were exercised by the Secretary in the Housing Department under the administrative control of the Housing Minister, subject, however, to the overall orders of the respondent as Prime Minister.

30.3. It is the case of the Government that six sets of plots in Gandhinagar at Jammu and 14 sets of plots in Srinagar were allotted to the relations of the respondent in contravention of the rules framed for the purpose and to the detriment of persons legitimately entitled under the scheme, for prices which were grossly inadequate and that this was done either at the direction of the respondent or with his knowledge and connivance and that thus the respondent abused his official position as the Prime Minister of the State and that the members of his family thereby improperly obtained pecuniary and financial advantages to which they were not entitled. The allegation as notified runs as

follows :—

“There was abuse and exploitation of the official position of Bakshi Ghulam Mohammad by himself or with his consent, knowledge or connivance by his family or other relatives in the allotment in an arbitrary and discriminating manner, of the plots noted below covered by the Low Income Group Housing Scheme :—

Gandhinagar, Jammu (during February-March, 1961) :

- (1) Plots No. 34 and 35 to Bakshi Bashir Ahmed S/o Bakshi Ghulam Mohammad.
- (2) Plots No. 36 and 37 to Mr. Nassarullah, son-in-law of Bakshi Ghulam Mohammad.
- (3) Plots No. 40 and 41 to Bakshi Ghulam Nabi B/o Bakshi Ghulam Mohammad.
- (4) Plot No. 27 to Bakshi Abdul Majid B/o Bakshi Ghulam Mohammad.
- (5) Plots No. 38 and 39 to Bakshi Abdul Rashid, cousin of Bakshi Ghulam Mohammad.
- (6) Plot No. 1-B to Bakshi Ghulam Hassain, cousin of Bakshi Ghulam Mohammad.

Jawahir Nagar Extension and Rajbagh, Srinagar :

- (1) Plots No. 43 and 44 to Bakshi Abdul Rashid cousin of Bakshi Ghulam Mohammad.
- (2) Plot No. 28 to Miss Zamrooda Bakshi D/o Bakshi Abdul Rashid.
- (3) Plot No. 42 to Ghulam Jeelani S/o Bakshi Abdul Rashid (Nephew).
- (4) Plot No. 4 N.D. to Mehraj-ud-Din, son-in-law of Bakshi Abdul Rashid (maternal cousin's son-in-law).

In addition to the above allotments other allotments were similarly made to other relatives and persons in whom Bakshi Ghulam

Mohammad was interested, namely :—

Name	Plot No.	Location
1. Zahur Ahmed and Mrs. Zahur Ahmed.	21 N.D.	Rajbhagh, Srinagar.
2. Hafiz Akhtar and Sugara Hafiz	9 N.D.	do.
3. Zaffar Ahmed	8 N.D.	do.
4. Shamas Ahmed Khan	1	Jawahar Nagar Extension, Srinagar.
5. Miss Khurshid Jalal-ud-Din (now Mrs. Bakshi Ghulam Mohd.)	2	do.
6. Ghulam Ali Bakshi.	275, 276	Narsingh Garh, Srinagar.
7. Ghulam Mohammad Sheikh.	383	Jawahar Nagar, Srinagar.
8. Ahmad Ullah Sheikh.	384	do.
9. Ghulam Nabi Sheikh	199	Narsinghgarh, Srinagar.
10. Smt. Aisha Begum	57	Jawahar Nagar, Extension, Srinagar".

30.4. Before proceeding with the narration of the facts on which this charge is based, it would be convenient to set out the defence of the respondent in order that only the relevant facts or documents which would be crucial for determining the controversy need be referred to.

30.5. In view of the nature of the allegation notices were issued under Rule 6(1)(a) to all the persons who were alleged to have benefited by these allotments. I do not, however, think it necessary to refer in detail to their defence, because the factum of the allotment is not denied and the only matters in controversy are—

- (1) whether there has been discriminatory allotment in favour of the persons specified in the allegation ;
- (2) whether they were entitled to the allotment of the plots ;
- (3) whether the price paid was low and not in accordance with the rules ; and

- (4) whether these allotments were made either at the instance of the respondent or with his knowledge and connivance.

30.6. In paragraph 4 of his reply the respondent states that it was the policy of the Government which was "thrashed at the anvil of the Cabinet at various stages to suit the vicissitudes of the situations as these emerged from practical consideration" that was implemented by the Minister or by the officers. He, therefore, desired that the proceedings of these meetings of the Board should be called for. Now as regards this point, the case of the Government is that though at the level of the Cabinet, policies were decided and declared and were embodied in Government orders which were published, the same were not implemented and that the allotments which are complained of as instances of abuse of power, were allotments effected in contravention of these policy decisions. With reference to the Board again, I have pointed out that the Board did not function after 1958 and that the decisions of which complaint is made were taken after the Board ceased to function. The proceedings of the Board, to which I shall have occasion to refer in dealing with this charge, were filed in the office of the Commission and though they were available for inspection by the respondent after he filed his reply to the allegation, he did not avail himself of the opportunity and was evidently not interested in inspecting the same. Besides, I should add that the documents included in the folders of which copies had been furnished to the respondent for his perusal and study, sufficiently explain the case of the Government as regards this charge, and it was after the examination of these documents that the respondent filed his reply. Therefore, the respondent has not been prejudiced by his not having before him the proceedings of the Board before he filed his reply.

30.7. In paragraph 5 the respondent states that the allottees were entitled to allotment in their own right and that the mere fact that they happened to be the relations of the respondent could not be held up as a disqualification to their obtaining what they were entitled to. In discussing the several allotments I shall, of course, consider whether each of them was entitled under the rules to allotment and the degree of impropriety, if any, in respect of each allotment, because it is the case of the Government that though in some of the cases listed in Allegation 12 some of the allottees were entitled to an allotment, still they were entitled only to plots of much smaller size and not to the plots of the size which were allotted to them, besides the allotments being out of turn and discriminatory against those who were under the rules entitled to allotment in priority to these relations. The respondent has also added in this paragraph that at the time of the impugned allotment certain of the persons specified in the allegation were not his relatives and he has specified Mr. Shamas Ahmad and Mst. Khurshid Jalal-ud-Din as not being his relatives at the time of the allotments. When dealing with those individual cases I shall refer to this defence.

30.8. In paragraph 6 the respondent offers not a defence, but what appears to be an extenuation by saying that the allotment to members of his family cannot be termed abnormal because there were

allotments to other Ministers and their relatives and he has given a list of 30 names of Ministers and their relations to whom allotments were made. Of these, items 20 to 30 are the member of the State Legislative Assembly or Legislative Council. In these cases, however, I should state the allotments were made in pursuance of a Cabinet resolution which classified them as entitled to allotment, applications having been specially invited from the legislators in pursuance of the directions contained in a Government Order to whose details I shall refer later. Items 16 to 19 were said to be the relations of the present Chief Minister but this relationship has been denied and no material has been placed to show their relationship, nor is it suggested what relationship they bore. As regards the others—items 1 to 15—some of them are Ministers and most of them were allotted plots by virtue of two Government Orders Nos. 33-8-HD of 1963 and 33-9-HD of 1963 dated respectively 25th and 26th April, 1963, evidently passed after Cabinet decisions. Under these two Government orders as many as 94 persons were specified by name as well as the number of the plots allotted to them. In regard to some, it has not been possible to ascertain the circumstances in which allotments were made to them, but these are very few in number. I am unable, however, from these allotments to deduce any inference which would help the defence of the respondent to the gravaman of the charge against him.

30.9. In paragraph 7 the respondent states that the Centrally sponsored scheme was modified to suit the peculiar conditions of the State and he asserts that these conditions which necessitated those changes were within the knowledge of the present Government and that this departure from the Central rules could not, therefore, be held up against him. Unfortunately for the respondent the gravaman of the charge that is made against him on the facts is not as regards the changes made from or the modifications effected to the central rules, but that the rules framed by the State Government were not followed and that thus the allotments were in violation of those very rules.

30.10. Paragraph 8 is somewhat curiously worded. The respondent points out the special status for Kashmir necessitated by its political, economical and geographical considerations and that those factors had induced an element of uncertainty in the population and worked as an inhibiting factor against investment in property. Up to this point it is understandable, but he goes on to add—

“Viewed in this context the usual norms or standards obtaining in the other States of the Union of India do not and cannot apply *mutatis mutandis* to the State of Jammu and Kashmir.”

Apparently what the respondent intends to convey by this paragraph is not that the normal ethical standards obtaining or which should obtain in the other parts of the country are not to be expected here, but that the modifications in the rules were necessitated by peculiar factors applicable solely to this area. In the succeeding paragraph he refers to the Cabinet order 178-C dated 19th January, 1956 under which applications were to be invited from (a) officers with an income exceeding Rs. 400/- per mensem, (b) permanent residents of Jammu and Kashmir State who are at present on the pensioners list of, or employed in, any

department of the Central Government, (c) permanent residents of Jammu and Kashmir employed in the Army and (d) general public. The argument apparently is that the Low Income Group Housing Scheme was modified in the State to make it not for the Low Income Group, but for the middle and higher income groups. Though this is a somewhat drastic departure from the Central Scheme and the main idea underlying the entire scheme was intended to benefit the poorer classes of employees who were without residential accommodation in a rapidly expanding population, the question which I propose to consider is whether accepting as proper the rules and criterion enunciated by this Government order the allotments, whose propriety is impugned in the allegation, were justified.

30.11. It is the next paragraph, paragraph 10 that is of some importance because if that could be sustained on the facts, very much of the criticism and even the basis upon which the charge is laid would be answered. Here he says—

“though a measure for the good for the low income group.... failed to enthuse the people for whom it was intended.... The State authorities were accosted with a general sense of apathy towards this scheme ; and the Government had to hold out inducements to the people to avail of the benefits of the said scheme. The Government was very keen to implement the scheme in order to remove congestion from the cities.... the scheme had to pass through a metamorphosis from a Low Income Group Housing Scheme to an all income group housing scheme. Even then its sweep and embrace had to be eventually widened to include the general public also. In the matter of offering inducement to the people concerned the Government had first to build up Government quarters for allotment to Government employees so as to form a nucleus to attract others. When this even did not succeed the constituents of the Government itself had to take the lead by getting plots allotted to the Ministers, other high officials, friends and relatives. The scheme was actually going abegging. It is this phenomena which would aptly explain the intrusion of the general public in the purview of the scheme and allotment of plots to all and sundry.”

He then goes on to specify 100 persons to whom he alleges plots were allotted, apparently in order to show that these allotments were not confined to his relations but to other officers of Government and to other members of the general public as well.

30.12. I shall consider the correctness of the statement regarding the scheme not having attracted the sufficient number of individuals for whom it was intended to make it a success after completing this reply by referring to the documents, but I do not consider that any point is gained by the reference to the 100 instances of officers to whom allotments were made. There were quite a large number of plots and these were allotted to applicants who had applied for those plots after their applications were processed and their eligibility according to the rules

determined. It is not the case of the Government that the allotments which are specified in Allegation 12 were the only ones that were made of plots in either Srinagar or Jammu. In the circumstances the fact that there were other allotments—some to officers and the others to some members of the general public—does not, therefore, help the defence. I have had a statement prepared by Government of these 100 allotments analysing the details of their eligibility as well as the authority who granted the allotment. It is found that in most of the cases (in a small number of cases the files are not available) the allotment was preceded by an application which was processed by the Department and the relative priority among the applicants was examined and it was after any particular applicant was held to have a claim that the allotment was made to him. As the respondent did not participate at the stage of the final inquiry, it has not been possible to ascertain what exactly he had in mind when he put forward these 100 instances as cases which would have some relevance to the defence which he has put forward. Undoubtedly, some of them are members of the general public, but as the Government Order in question did permit allotment to the general public, there was no violation of any principle in the allotment to them. I shall, when dealing with each individual allotment whose property is impugned, deal with the circumstances and discuss the case of the Government as regards the grounds for stating that the allotment was improper and had been made in order to improperly benefit the relations of the respondent.

30.13. In paragraph 11 the respondent seeks to support what he had stated earlier, namely that the scheme was not popular and, therefore, inducements had to be offered to the general public and that was the reason why the relations of the respondent were allotted these plots, so that they might by their example attract others. For that purpose he states that there were still plots at Jammu and Srinagar still unallotted, but this has, however, been denied by the Government and no material has been placed to show that the statement in paragraph 11 is correct. In the same paragraph he refers to other areas besides Jammu and Srinagar where there were other schemes in which also he says popular enthusiasm was lacking but that, however, is beside the question because it might be that there are other areas which are not popular, but what we are concerned with are the areas in Jammu and Srinagar in which these plots were allotted.

30.14. In paragraph 12 he attributes the dissolution or death by inanition of the Low Income Group Housing Board in 1958 as being due to the dismal response to the scheme, but a reference to the records shows that this is far from correct. And then his defence is that there was a separate portfolio created in 1958 under the charge of the Minister for Housing and he relies on the circumstance that this portfolio remained in charge of a Minister other than himself and, therefore, he was not the Minister-in-charge. But as the Government had among the documents which they had filed in support of their allegation included several in which it was expressly recited that the allotments were being made by virtue of the orders of the respondent, the respondent states in his

reply—

“It may be that on rare occasions this respondent may have referred some cases to the Minister-in-charge, the applicants having approached the respondent directly. In this case too the respondent submits that no question of favour or discrimination arises.”

Possibly the idea intended to be conveyed by these words is if this constitutes a defence—that the relations to whom plots were allotted approached the respondent directly and that he referred these cases to the Minister-in-charge but as will be seen from the documents where the respondents name appears, his contribution to the process of allotment is more positive and that apart, if he had recommended the allotment of these plots to the Minister-in-charge and they happened to be relations who were not entitled to the allotment the case of the Government would obviously appear to have nearly as much force as if he had himself ordered the allotment.

30.15. In the succeeding paragraph 13 there is another type of defence that is raised. He states that his cousin Abdul Rashid was himself a man of influence, having been the General Secretary of the National Conference the ruling political party, and, therefore, as regards the plots allotted to him or to his relations the defence is that it need not necessarily be that it was the influence of the respondent that was responsible for the allotment but that the influence of Rashid himself was sufficient to obtain the benefit of these several allotments. He follows this up by setting out the names of 82 members of the State Legislative Assembly and the Legislative Council to whom plots were allotted. But as I have indicated earlier, by virtue of a Government Order applications were invited from members of the Assembly and the Council from among those who did not possess residential quarters in Jammu and Srinagar for allotment of house sites and it was in pursuance of this invitation that most of these 82 made applications and received allotments. I do not, however see how this bears upon the charge which has been levelled against the respondent.

30.16. One of the points made by the Government was that according to the scheme in regard to the allotment of plots to the members of the public it had been decided that though they were entitled to allotment, the price to be charged for their plots was to be determined by an open auction, this, however, was not followed in the case of the allotment to those near relations of the respondent whose title to allotment was not based on their being employees of the Government but only on their being members of the general public. The answer of the respondent in paragraph 14 was that as the Government were anxious to induce people to come and join the scheme and obtain allotments, no resort to open auction could arise and it was only in 1961 that the Government thought of launching this experiment of determining the price by open auction and that this was the first and the last occasion on which this was done. And he added that even among those who obtained plots by auction, many of them neither paid the amount of their bids nor took possession of the same and he desired the commission to call for complete information on this from the Government. I shall be dealing with this defence in more detail later, but here

it is sufficient to say that as most of the allotments whose propriety is impugned were in 1961, it has been pertinently asked by learned counsel for Government as to why when other plots were then being auctioned to determine the price, a similar procedure was not adopted in the case of the plots which were allotted roundabout that year and shortly afterwards. Secondly it is not correct to say, and the documents negative it, that many of those who successfully bid at the auction refused to take possession. Document 24 shows that there was an auction of plots in Gandhinagar, Jammu on 30th May, 1961 at which 34 plots were auctioned; 30 of the successful bidders paid the price and took possession, only four refused to pay on the ground that others had been allotted plots at lower rates.

30.17. In paragraph 15 he has desired the Commission to call for from the Government 10 files relating to the allotment of house sites for its perusal. Except four files whose existence has been denied, the Government have produced the others and I shall be referring to them also when dealing with the facts in relation to this allegation.

30.18. From paragraph 16 onwards the respondent has replied seriatim to the several paragraphs of the statement of the case which in most cases are merely a repetition of what I have extracted earlier from his reply. But it is necessary to point out that in paragraph 27 he denies an assertion by the Government that in most of the cases of the allotments whose propriety is impugned they were made even without applications having been made by the persons concerned. I shall deal with this aspect when considering the allotments individually.

30.19. In paragraph 28 the main matter dealt with by the respondent is as regards the allotment of plots 275 and 276 in the Narsinghgarh colony at Srinagar to one Ghulam Ali Bakshi. After admitting that the said individual was his relation being a collateral, he denies that there was no application by him and states that he has no recollection of having directed the Chief Engineer to send a telegram to him regarding the allotment—a matter which I shall consider when dealing with that allotment. He also puts the Government to proof that he had anything to do with the allotment of the applications to which he has made reference and in the succeeding paragraph he refers to the circumstances in which certain of the allotments were made. Besides, generally he states that he was not a Minister-in-charge of Housing and, therefore, any irregularity in the allotments could not be attributed to him.

30.20. I have now set out in some detail the reply of the respondent and from this it would be evident that it is necessary to examine the following points in connection with these allotments : —

- (1) Was there a general apathy or a disinclination on the part of the persons for whom this scheme was intended to take advantage of the scheme and apply for allotment ?
- (2) What was the basis upon which among the persons entitled to allotment *inter se* priority was determined ?
- (3) Whether the persons specified in Allegation 12 were under the rules entitled to an allotment (a) of any plot, and (b) of plots of the size which they were allotted ?

- (4) It being conceded that an application was necessary in order to entitle an applicant to an allotment, did all or any of the persons named in the allegation make applications ?
- (5) If applications had been received from them, was there any impropriety and if so what in the allotment to them ?
- (6) What was the price which was charged for the allotment of the sites and was this in accordance with the rules ?
- (7) Under whose orders were these allotments made and what was the part played by the respondent in the said allotments ?

30.21. Though these are the points arising for examination and decision, I do not consider it convenient to deal with them in the order set out. I propose to deal first with the scheme and its implementation at Jammu, setting out the availability of the plots at various stages and finally to deal with the details of the irregularities urged in respect of the six allotments at Gandhinagar, keeping in mind the points I have formulated as those arising for consideration. Thereafter I shall proceed to deal on similar lines with the scheme etc. at Srinagar and the charge made against the respondent in respect of the 14 allotments at Srinagar. This I consider would give a proper picture of the situation and make the discussion and my findings intelligible.

30.22. The genesis of the Housing Scheme is to be found in an announcement by the Government of India in the Ministry of Works, Housing and Supply of a scheme called the Low Income Group Housing Scheme formulated in 1955 and which was published for general information in 1956. The basic idea of the scheme as set out in the introduction (vide Document 1—Brochure of the Government of India entitled 'Low Income Group Housing Scheme') consisted in the promise of disbursement of loans by the Central Government to State Governments to enable the construction of new houses for persons in the low income group. Aid under the scheme was available primarily for the purposes of providing houses for persons whose annual income did not exceed Rs. 6,000 and who did not already own a house. It was, however, made clear that there was no objection to a State Government advancing loans to a person even if he owned a house provided the additional house was needed for a bona fide residential purpose. The Scheme then set out the persons for whom assistance could be made available and in paragraph 4 which dealt with this matter, it enjoined on the State Government the obligation to try to arrange as far as possible the allotment of land to intending builders at as low a price as possible. The terms upon which the loans could be made available to the intending builders were also specified. It need not be mentioned that there were provisions here for the terms upon which the Central assistance would be available to the State Governments for the acquisition and development of land, slum clearance, house building etc. There were further provisions as regards the utilisation of land and in these it was laid down that the size of a plot to be allotted under these schemes was not ordinarily to exceed 500 sq. yds. It, however, provided that a limited proportion of plots may, on the discretion of the State Governments, be ear-marked for sale to persons not covered by these schemes and as

regards these it was expressly laid down that they shall be sold by open auction or by open tender. The other condition for sale set out in the Central Scheme was, that not more than one plot would be sold to an individual or a firm, but with power in the State Government to relax this condition in exceptional cases. Paragraph 8 of the Scheme specifically laid down that though the Scheme was applicable to all the States of India, nevertheless the State Governments were empowered to formulate rules and instructions for the implementation of the scheme.

30.23. With these introductory observations I shall proceed to narrate the history of the scheme as formulated and implemented in Jammu, and in doing so I shall refer to the contents of File No.2/2 HD-56/C-Development which is the file in respect of the Scheme at Jammu.

30.24. With a view to implement within the State the Housing Scheme for which loans from the Government of India were being made available, a Government Order of the State Government numbered 143-C/56 dated 14th January, 1956 was issued, (vide page 1 of the file *ibid*). By this a Low Income Group Housing Board was constituted with the Prime Minister as the President, the Finance Minister, the Chief Engineer, the Development Adviser of the Government of India, the Financial Commissioner, with a Member-Secretary, for sanctioning loans generally in accordance with the principles laid down. The officers who were to administer the enactment were specified in this Government Order as also the rates at which loans for house building were to be advanced. Government had also decided, and that policy decision was stated in the Government Order, that the loans were to be made available only to permanent and pensionable Government servants with an income not exceeding Rs. 400 per month and was confined to those who were ordinarily residents of Jammu. This was followed by an order No. 177-C of 1956 dated 19th January, 1956 (page 8 of the file which dealt primarily with the amount of the loan admissible to various classes of Government servants. Paragraph 3 of this order stated that the Government would select sites for allotment to the applicants on payment of suitable amounts to be fixed separately, that one person could take only one plot except where in a family there were more than one person eligible in which case each would be entitled to one plot and that ordinarily the plots were to be of the dimension of 45 x 60 feet. The Government Order also stated that the provisions of the Cabinet Order 143-C of 1956 might in exceptional cases or in the interest of the Scheme itself be deviated from, but only for reasons to be recorded. It may be stated that the scheme was to be applicable only to Government and municipal servants whose income was less than Rs.400 per month (vide paragraph 10 of Government Order 143-C of 1956).

30.25. On the same date as Government Order 177-C another Government Order No. 178-C of 1956 was issued (vide page 10 of the file). It directed that a new township to be called Gandhinagar as per a site plan forming part of the annexure to the order, be properly developed and that the plots would be laid out there by the Public Works Department. The plots so laid out were to be transferred on proprietary rights by the Board to such Government officials as were eligible to

receive loans under the Low Income Group Housing Scheme and other officers who might wish to obtain such plots for the construction of their houses. The price for each plot was to be Rs. 500 and the cost of these plots was to be recovered immediately in cash or treated as loan. Each official was to get only one plot except that officers with an income exceeding Rs. 400 per month might be given two plots each. It was further ordered that 200 plots of a larger size—90 x 65 feet—would be reserved for sale to persons other than Government servants at Rs. 2,000 per plot.

30.26. I will not pause to consider how far the provisions of this Government Order constitute a departure from the scheme as formulated by the Government of India as the same is not relevant for this inquiry.

30.27. But even before the Government resolution dated 19th January, 1956 was passed there had been a meeting in the office of the Prime Minister (the respondent) on 20th December, 1955 (vide page 15 of the file) and applications were invited from officers of the Low Income Group for the grant of loans to construct residential houses under the Jammu Housing Scheme. The last date for the receipt of applications was to be 23rd January, 1956. In response to this 1187 applications were received within the time limited for grant of plots together with loans for construction or re-construction of houses, and about 400 more applications were received just after the last date fixed. The break-up of these applications is as follows :—

Applications for loans as well as plots

	Inferior servants	Within the income group of 1200 per annum	Within the income group of 1201 to 2000	Within the income group of 2001 to 3000	Within the income group of 3000 to 4800
i) Residents of Jammu City	93	434	274	57	37
ii) Residents of other parts of Jammu	12	72	29	9	1
iii) Residents of Kashmir	2	12	14	5	1
TOTAL :	107	518	317	71	39

30.28. At a meeting of the Board it was further decided that the plots would be allotted to prospective applicants by drawing lots subject, however, to some grouping on the basis of kinship, profession etc. The list of persons in whose favour plots had been allotted would be published and it was decided to lay down the procedure for drawing lots, with the rider that as far as possible this should be done in the presence of the allottees and then notified. These details are to be found in a

memorandum prepared by the Secretary to the Housing Department dated 29th February, 1956 (pages 15-28 of File No. 2/2-HD-56-C).

30.29. Apparently it was found that the number of applications from the low paid employees for grant of plots in Gandhinagar exceeded or was likely to exceed the number of plots that could be plotted in the area originally allotted to form the township, since we find that the president of the All Jammu and Kashmir Low Paid Employees Federation, Jammu submitted a memorandum praying that in case the number of applications for the grant of plots in Gandhinagar exceeded the plots earmarked for the low paid employees, the area of the colony may be extended to accommodate all the low paid employees who had applied for the grant of plots and who were otherwise eligible (page 32 of the file). As it was considered that the allotment need not be confined to officers with an income not exceeding Rs. 400 per mensem, particularly as in the Central Government Housing Scheme the figure laid down was Rs. 500 per mensem, applications received from employees exceeding Rs. 400 per mensem were also considered for allotment. Applications from this class of people had been invited in pursuance of Cabinet Order No. 178-C dated 19th January, 1956 and as a result of this fresh invitation, as many as 521 further applications including 100 from Government servants drawing a pay of less than Rs. 400 per month were received. The number of plots of 45x65 feet required to satisfy these fresh applications was 750 including 107 plots needed by those Government servants drawing a pay of less than Rs. 400 per mensem. (Some applied for more plots than one). The attention of the Board was drawn to these applications and the matter was placed before it by the Secretary to the Government, Housing Department, by his memorandum dated 8th March, 1956 (Document 5).

30.30. On 31st March, 1956 a programme was prepared as regards the order in which things should be got ready and allotments made (vide page 47 of the file). By the 6th April applicants were to intimate the groups which they desired to join. The desire of the applicants having been known, the office was to prepare the list of these groups by the 8th April and lots were to be drawn on 9th April, 1956 at 11.00 A.M. as already decided upon. The applicants were to be informed of this and a suitable place fixed in the Secretariat and a list was to be made of the persons to be invited to draw the lots. By the 20th April the final list of allotment was to be drawn up and announced and possession handed over to the several allottees.

30.31. This process evidently could not be gone through because of the paucity of plots having regard to the number of the applicants and we find that on the 11th April, 1956 it was decided by a committee consisting of the Financial Commissioner, the Secretary Housing Department and the representative of the Low Paid Employees Federation, that as the number of plots to be distributed was limited, the cases of the army personnel, Central Government employees and pensioners of the State and Central Government might be left over for future consideration. This was confirmed at a meeting of the Housing Board on 14th April, 1956 at which Sir Datar Singh was present (vide page 52 of the file).

30.32 Pausing here, it might be pointed out that certain matters were put up for the respondent's orders by the Housing Secretary by a note dated 10th April, 1956 and the orders of the respondent are noted on the margin against each of these points (vide page 51 of the file). There were 132 plots which were by the road side. The respondent had evidently informed the Divisional Engineer that these plots were not to be allotted for the time being. Confirmation in writing was sought of this direction and the note on the margin of page 51 of the file contains this confirmation which is found repeated on page 66 of the file. This is of some significance because it has to be considered in the context of the shortfall in the number of plots available for allotment compared to the number for which there was demand and as already seen, army personnel and Central Government officers were left out only "for the time being" in view of the scarcity in the plots available for distribution.

30.33 On 23rd April, 1956 a meeting of the Board was held in the office of the respondent at which besides him, the Finance Minister was present. Among the orders passed at this meeting was one by which "allotment of plots in the case of members of general public and officers (drawing) above Rs. 400/- per month shall be made by the Prime Minister" (vide page 65 of the file).

30.34 In the agenda drawn up on 21st April, 1956 for the meeting of the Housing Board, the applications received up to that date and the availability of plots was set out thus (vide paragraph 3 of the agenda on page 66 of the file)—

"The total number of applicants whose applications have been accepted for plots, according to different income groups is as below:—

"(1) (a) Low Paid Employees of State ..	1000
(b) Pensioners ..	42
(c) G. O. I. Officials below 400/- ..	58
(d) Army personnel below Rs.400/- ..	97
Total	1197
(ii) (a) Officers above Rs.400/- ..	37
(b) Govt. of India employees above Rs.400/- ..	5
(c) Army personnel [above Rs.400/- ..	21
Total:	63

(iii) General Public	200
(iv) Orderlies	103

"Against Item No. (i) only 996 plots are available at present. Against Item No. (ii) 282 plots of double size are available 263 and 368 plots are available against Nos. (iii) and (iv)."

30.35 I have only to add that besides the accepted applications, there were quite a large number of applicants whose applications had either not been considered or on which no orders had been passed. After this there was a review of the position in the middle of June, 1956 and thereafter it was suggested that the blocks be re-named and re-numbered and the break up of these plots which were available for allotment was given in a note which is appended to a memorandum prepared by the Housing Department on 18th June, 1956. The position was analysed thus (vide page 60 of the file) In 'A' Block there were 1128 plots of 65'x45' size. Of these 996 had been sold but only 720 agreements had been duly verified. Therefore, these alone were to be treated as finally allotted. As regards the Block for Peons and inferior servants of A-I Block, these were of size 32½'x45'. There were 368 plots out of which 103 were allotted. In Block 'B' there were 282 plots of 90'x65' size, but of these only 242 were available for allotment, the rest having been reserved (by the respondent for later consideration); there were 66 applications of which 36 had been verified. As regards the low paid employees and peons, it was stated "*that luckily the total number of people to whom the plots were to be allotted will not exceed the number of 750 plots available*", though certain plots will have to be divided into two in order to make the plots go round. As regards the general public, this was what was stated. Two hundred and one applications had been received and 52 had been verified, but the decision about the allotment to these 'will be taken by the Prime Minister'. The allotments were to be to officers with an income of over Rs. 400/- per mensem and out of the plots for the general public in the 'B' Block where there were 308 plots, some had been reserved for construction of Government houses by the Public Works Department. This was followed by a statement on page 63 which showed the break-up of the plots in the several blocks. After suggesting a re-numbering of these blocks, 'A' Block was to have 195 plots of the size 120 x 75 feet. These were reserved (apparently for allotment by the Prime Minister) 'B' Block (90 x 60 feet) —308 plots—in which the general public and officers above Rs. 400/- were to have plots. Block 'C' (65'x45') —870 plots. It will be seen that by this realignment bigger size plots were introduced into the 'A' Block.

30.36 It was decided at a meeting held on 28th June, 1956 (vide page 71 of the file) at which S. Datar Singh was

present that there was no need for upsetting the allotments already made and cases of individual applicants as to whether they were eligible for allotment of plots applied for by them were also considered.

30.37 There had been quite a number of officers belonging to the Province of Kashmir and to districts other than Jammu in Jammu Province who had made applications for the grant of plots in the Gandhinagar township. No plots had been allotted to them yet and the question arose as to how these were to be dealt with. At a meeting of the Housing Board held on 17th July, 1956 at the office of the respondent at which he was present it was decided that these should be kept pending (page 81). Besides there were several applications which had not been received before the last date advertised. The matter was put up before the Board as to whether the delay could be condoned and these applications considered on their merits. It was, however, decided at this meeting that applicants whose applications had reached too late even by a day could not be considered (item No. 11 of the agenda page 82 of the file). This last decision, however, was revised at a meeting of the Board held on 15th January, 1957 at the office of the respondent at which he presided (Document 7). The decision was in the following terms;

"Allotment of plots 90'x60' in size should be made to those who have applied for it irrespective of the fact whether their applications were in time or not. The rate to be fixed for this plot will be Rs. 1000/- from Government servants and Rs. 1500/- from the public. As regards bigger plots of 75'x120' applications should be invited both from the officers and the general public. The applicants could be given up to two plots from both categories of plots. The value of a plot will be Rs. 1500/- from Government officials and Rs. 25,000/- from the general public. *Ten plots from each of the two categories have been reserved and will not be available for allotment.* Applications for plots of 75'x120' should be invited by the end of January and those who have already applied for 90'x120' size should be given the choice to apply for 75'x120' size plots instead." (*underlining mine*).

Lastly, it was said that the pay which an official drew at the time when applications were invited would be taken into consideration for determining the plot available.

30.38. By January 1957 the position regarding the allotment of plots in Gandhinagar as per statement prepared on

14th January, 1957 (vide page 90 of the file) was as follows:—

A-1 Block (32½x45' for orderlies)

(i) Number of plots available ..	76
(ii) Number of plots allotted ..	28
(iii) Number of remaining plots ..	48

A Block (45'x65' for low paid employees drawing below Rs. 400/- p. m.)

(i) Number of plots available ..	833
(ii) Number of plots allotted ..	814
(iii) Number of remaining plots ..	19

In both these cases there were quite a number of pending applications not disposed of ..

B Block (60'x90' for High Income Group Officers and general public)

(i) Number of plots (308 minus 79 reserved for P.W.D. constructions ..	229	
(ii) Number of officers who applied in time ..	66	} Total 300
(iii) Members of the general public who applied in time ..	206	
(iv) Late applicants ..	28	

C Block (120'x70')

Number of plots available ..	195
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No applications yet called for.

30.39 On 26th July, 1957 a new Cabinet was formed and under the new set up the Department of Finance came under the administrative control of the Prime Minister (the respondent) and the Department of Housing was allotted to the Development Minister who was also the Minister of Housing. Accordingly by proceedings dated 8th October, 1957 (Document 8) besides the Prime Minister the Minister in charge of Housing was also made a member of the Housing Board. There was a meeting of the Housing Board on 22nd April, 1958 at which the following

matters were decided (vide pages 101-105 of the file *ibid*)—

Item 5: Certain of the employees who had received allotments failed to register their agreements in time, the reason advanced by them being that there were officers among them who moved to Srinagar in summer and consequently they could not comply with the formalities in time. They, therefore, prayed that the time for registration might be extended. The decision was that these employees who failed to register documents in time would be allotted plots but would not be given loans, that they would be given three months within which to register their agreements and start construction and failing this they would lose their right to the plots also.

Item 6: There was another set of low paid employees who filed their applications through the heads of Departments but these higher officials detained them for one reason or another, so that these applications were not received in the Secretariat in time. They, therefore, prayed that they might be treated as if they had applied in time. The decision on this was that they would be given only the plots but not loans.

Item 8: Certain of the officers drawing Rs. 400/- and below made a representation that having regard to the needs of their family they might be allotted plots of bigger size than what was originally intended for them. This representation was rejected. Apparently, it could only have been because they were needed for other people.

Item 9: This item of the agenda proposed that the size of the plots be varied from 90'x65' into 90'x60' so as to make more plots available. This change was agreed to.

Item 28 of the agenda read—

"Under the Low Income Group Housing Scheme allotment of plots (without grant of loans) at Jammu is admissible to Government servants whose applications were received in time, without any restriction of being from a particular District.

Since paucity of plots of 45' X 65' size is being felt at present this restriction may be imposed in respect of this category of plots for the present."

This was agreed to by the Board (vide page 104 of the file).

30.40 It is not necessary to set out the various stages these applications passed through, but it is sufficient to state that for plots in Gandhinagar, Jammu up to 30th March, 1961 there were approximately 700 applications which were pending. The last acceptance letter making an allotment was on 16th

November, 1957 and no allotments were made subsequently, but the applications were still pending (vide Document 26 containing a list of these applicants, the correctness of which has not been challenged). These applications were being received from January 1956 onwards right up to 30th March, 1961 and had not been disposed of by allotment till the respondent ceased to hold office.

30.41 In order further to show that the plots were not going abegging, learned counsel relied on an office note on an application by Bakshi Abdul Rashid, Member of Parliament, for the allotment of two plots at Gandhinagar of 120'x75' in size. The note of the Secretariat said (vide Document 36)—

"The position of plots in the 'C' Block is very tight this time and no plot in any sector is available now. In 'B' sector of this Block, however, 2 plots, Nos. 32 and 33, which stand presently in the name of Mir Ghulam Rasool, Chief Engineer, Irrigation under suspension are uncovered. A notice was sent to Mir Sahib.. in reply to which he stated that he may be given some more time for paying the cost of plot.... This was in September last. Since then four months have rolled by.....It is proposed that we may cancel this allotment for the present and allot these two plots to the applicant. If Mir Sahib will be still keen to have plots at Gandhinagar, we can allot him some other plots in due course"

This shows that there was difficulty of finding plots for allotment having regard to the number of applicants. A note on this application (Document 36 of February 1961) I might now extract and it reads—

"He has now been allotted two plots by P. M."

I shall deal with this document with particular reference to the impugned allotment to Abdul Rashid when considering that particular item.

30.42 Meanwhile it might be mentioned that 34 plots in Gandhinagar were auctioned among the members of the general public on 30th May, 1961—an auction which was directed on 12th May, 1961 and advertised on 17th May, 1961 (vide Documents 22 and 23). Document 24 is the list of the highest bidders for the 34 plots which were then auctioned. The amount received on each plot auctioned varied between Rs. 9,775/- which was the lowest to Rs. 17,000/-, the average being somewhere about Rs. 12,000/- per plot. It will be noticed that the price fixed for the general public and on the basis of which allotments, whose propriety is impugned, were made was Rs. 2500/- per plot and the date of the auction is very near the dates of these allotments.

30.43 I might now summarise the position as it emerges from the history just now narrated —

(a) Far from there being any paucity in the number of applicants desirous of obtaining allotment of plots, the number of applicants was very many more than there were plots to go round. It was because of this that there were as many as 700 applications made on various dates which were pending on 30th March, 1961 as per the list in Document 26.

(b) So far as members of the general public were concerned, there was such an intense desire to obtain these plots that there was a keen competition at the bidding for the 34 plots auctions to which were held on 30th May, 1961.

(c) Several blocks were reserved for later consideration, for instance in the 'C' Block with plots measuring 120x70 feet there were 195 plots available for allotment but no applications had been called for by 1957.

(d) By reason of the direction of the respondent, he was given the power by proceedings of the Housing Board dated 23rd April, 1956 that allotments of plots to the general public and to officers above Rs.400/- per mensem, i. e. the larger plots, were to be made by the respondent himself (vide pages 65 of the file).

(e) Applications were being invited for the allotment of plots on the basis of Government orders and the allotment was confined mostly to those who had applied in time, but some concessions were latter made in favour of those who made applications even after time and it would appear as if those who had applied in time were considered to have priority over those who were being allotted plots out of indulgence because they applied late. This would indicate that the filing of an application and the processing to determine priority and the right to allotment was essential before an allotment would be made.

(f) A very large number of plots was reserved at the instance of the respondent from being brought into the pool for allotment for the only possible reason that they were to be allotted on his orders.

30.44 Pausing here, I should make a reference to the plot directed to be "reserved" by the respondent. For instance, the revised layout plan of Gandhinagar Extension dated 16th April, 1963 makes provision for 183 plots of 75' x 120' and 76 plots of 60' x 90'. It shows the plots which have already been allotted but besides it shows that one whole block of 24 plots -114-125 and 135-146 -had been reserved and only the rest were available for allotment [vide Document 21 (1)]

30.45 Some of these plots were evidently intended for members of the Legislature and at the end of March 1963 a circular letter was addressed to the members of the State Assembly and the Legislative Council soliciting information as to whether they had sufficient accommodation available at Jammu and whether they desired the allotment of plots, the size of the plots intended to be allotted to them being 90'x60'. The last date on which the requisite information was to be supplied was 25th April, 1963. In pursuance of this invitation several of the members of the Legislature made applications and these were Legislators to whom reference has been made in the reply of the respondent, and they were allotted sites by virtue of Government orders.

30.46 With this background I shall now proceed to consider the allotments of the six plots in Gandhinagar whose propriety is impugned in Allegation 12.

(1) *Allotment of plots 34 and 35 at Gandhinagar Jammu to Bakshi Bashir Ahmed respondent's son.*

30.47. The order by which these two plots 34 and 35 were allotted to Bashir Ahmed is Document 32. In this document the original number of the plots allotted to him is set out as plots 38 and 39, but this has been corrected in manuscript over the type-written matter to 34 and 35. It is dated 7th February, 1961 and is signed by the Secretary to the Housing Department. This order after issue was, as seen from the endorsement on it placed before the Minister for Housing Mr. Shamas-ud-Din for confirmation and he has noted on it "Seen" under date 16th February, 1961. Now the points that are made in regard to this allotment are these. It was stated by the Government that there had been no application by Bakshi Bashir Ahmed for the allotment of any plots, but notwithstanding that there was no application he was allotted these two plots. There is no application on the file and in none of the orders or communications is there any reference to any application by him. In the reply that Bakshi Bashir Ahmed has filed, without positively stating that he had made an application, not to speak of giving details of such an application, he merely asserts that the plots were allotted to him in a "normal regular routine manner" I am, therefore, satisfied that the case of the Government that there was no application by him is made out. The point about the change in the plots allotted to him arises from this that the neighbouring plots 36 and 37 were being allotted by an order passed on the same day (7th February, 1961) in favour of Mr. Mr Nasrullah, the sister's husband of Bashir Ahmed. It was, therefore, considered more convenient for them to have contiguous plots and as a matter of fact both the plots have since been surrounded by one compound wall and a building has been raised in the middle of the plot.

30.48 Lastly, in regard to the part of the respondent in this allotment, the position is this. The order of the Secre-

tary to the Government required the confirmation of the Minister in charge and that is why it was placed before him for confirmation. But the significance of the endorsement by the Minister that he had "seen" which is found both in the allotment to Bashir Ahmed as well as to Mr. Mir Nasrullah which will be dealt with immediately, will be gathered from the allotment to Abdul Rashid to whom plots 38 and 39 which were originally allotted to Bashir Ahmed were finally allotted. That allotment was also on the same date (7th February, 1961) and when the order allotting plots 33 and 39 was placed before the Minister for confirmation, the Development Minister Mr. Shamas-ud-Din has endorsed in his own hand the following:—

"Seen. No confirmation in such cases is necessary where P. M. has made the allotment."

The Government are, therefore, right in saying that the endorsement "Seen" in Document 32 is to be read in the light of what the Minister had stated in Document 37, namely that no formal order of confirmation by him was necessary, because the respondent had made the allotment as Prime Minister. The other point made about the plots allotted to Bashir Ahmed not being put to auction to determine the price and charging him with the rate at Rs 2,500 - per plot is common to all the allotments in favour of the relations of the respondent and they would be dealt with together. It is further to be noticed that whereas there was acute scarcity and applicants were unable to obtain even one plot, two plots were allotted to Bakshi Bashir Ahmed in 'A' Sector 'C' Block which had plots of the biggest size.

(2) *Allotment of plots 36 and 37 to Mir Nasrullah, son-in-law of the respondent:*

3049 The order of allotment in this case is Document 33. In his case the points made on the basis of which an abuse of power was sought to be established were that there was no application by Mr. Nasrullah and that he was selected out of turn, though as an employee of the State Government he was within the class of people who were entitled to allotment. It was again stated that though he was entitled as of right only to one plot, two plots were allotted to him. Now in regard to these objections Mr. Nasrullah in the reply that he has filed does not deny the statement that he made no application for the allotment of a plot. However, he has given a list of 17 persons who were officers of Government to whom plots were allotted, but that, however, does not answer the points made against the allotment to him which I have mentioned earlier. In his case also the allotment order (Document 33) was submitted to the Minister Mr. Shamas-ud-Din for confirmation and he has endorsed on it "seen" and having regard to the terms of Document 37 it must be taken that the Minister considered that confirmation by him was not necessary because the allotment had been made by the respondent.

(3) *Allotment of plots 40 and 41 in 'A' Sector 'C' Block to Bakshi Ghulam Nabi, brother of the respondent:*

30.50 The allotment of these two plots was by Document 31 also dated 7th February, 1961. In this case also, as in the case of the other two just now dealt with it was asserted by the Government that there was no application by him and they have filed Document 56 containing a list of persons who had not filed applications but who had nevertheless been allotted plots. This document was perused by the respondent and it was after such perusal that the reply has been filed. The other point made against this allotment was that he had already a residential house in Srinagar and this is not disputed (vide Allegation 7), but still he was allotted two big size plots 120'x75' each. In the reply that he has filed he states that he was entitled to allotment as a businessman just as several others, and he has given a list of 28 such businessmen to whom plots were allotted. The details of these persons have been verified and while it is found that one of them Abdul Ghani Khan was not allotted any plot in the name of his minor son as alleged, the other 27 were allotted plots, but these were persons who had made applications, whose applications had been processed and they had been allotted plots in the usual and regular course. These instances, therefore, do not answer the points made as regards the propriety of the allotment to Ghulam Nabi. Now in the case of this allotment, the order of allotment was submitted for confirmation to Mr. Shamas-ul-Din Development Minister and he has endorsed on it: "No confirmation is necessary. Seen". Having regard to the terms of the endorsements on Document 37 which were all passed by him on the same date, it is clear that confirmation was considered not necessary in this case also because the allotment had been ordered by the respondent. Only one thing remains to be mentioned regarding this allotment and that is that these two plots 40 and 41 were first allotted to Bakshi Abdul Rashid but that the name of the allottee was later changed to Haji Ghulam Nabi, but as nothing turns on that, no further reference to it is necessary.

Allotment of plots Nos. 38 and 39 to Bakshi Abdul Rashid:

30.51 The last of the allotments made on 7th February, 1961 was item No (5) by which plots 38 and 39 were allotted to Bakshi Abdul Rashid. In his case the order of allotment is Document 37 and the office noting on the application that he filed which is Document 36 has already been referred to. In these notings the Secretariat pointed out that "the position of plots in 'C' Block is very tight" and that he might be allotted plots in the 'B' Sector and it contained a note stating that two plots had been allotted as ordered by the respondent to Abdul Rashid and hence the consideration of allotment of plots in 'B' Block need not be considered. In the order of allotment (Document 37) by which plots 38 and 39 in 'C' Block were allotted to him, when the order was

submitted to the Minister Mr. Shamas-ud-Din for confirmation he made the endorsement 'Seen'. "No confirmation in such cases is necessary where P. M. has made the allotment."

In the reply that he has filed Abdul Rashid has stated that the plots were allotted to him in view of his being the General Secretary of the National Conference and that there was need for him to stay at Jammu during the winter months. He further repeats what the respondent has himself stated as the main part of his defence that the Low Income Group Housing Scheme elicited little response from the people and in order to give a lead to the people, State dignitaries and Members of Parliament were allotted plots and that he has obtained the allotment by virtue of his "unignorable position and status" and that he did not need any assistance from another quarter. There was another point made by Government as regards the allotment to him, namely that several other plots were allotted to him in Srinagar (plots 43 and 44 in Jawahar Nagar Extension to himself, plot No 23 to his daughter Zamrooda and plot No.42 to his minor son Ghulam Jeelani). As regards this he says that it was a regular feature of the State's economy to obtain contracts in the name of and on behalf of the minors and, therefore, "there was nothing phenomenal in the allotment of the plots in the name of the above-mentioned minors. As the Government was keen to dispose of the plots expeditiously to attract attention of the elements among the people concerned in the said housing scheme." this was done. This part of the defence has already been examined and it is not necessary to repeat the same, but the details of these allotments at Srinagar and the irregularities stated by Government in connection with them I shall consider later. It will be noticed that Abdul Rashid denies that the respondent had anything to do with the allotment of plots to him. The same is the line adopted by the respondent himself in paragraph 29 of his reply where he says-

"It is denied that the allotment of plots to Bakshi Abdul Rashid had been made by the respondent."

And he wants the Commission to put a proper construction on Document 36, but in view of what I have extracted from Document 37—the note or endorsement by Mr. Shamas-ud-Din, Minister for Development—I am not able to put any other and it is clear that it is the respondent's recollection even after a perusal of DOC. 37 which is to say the least faulty. Now, so far as Abdul Rashid who had made an application (dated 30th January, 1961) is concerned, the main point made is that he was preferred to so many other applicants as is clearly seen from the noting in Document 36.

30.53 Thus, four allotments of plots 34 and 35, 36 and 37, 38 and 39, 40 and 41 were all made at the same time and as is seen from Document 37, by the respondent himself, and

three of them were made inspite of the fact that there were no applications by them and in the fourth the allotment was clearly out of turn, and finally in each of these cases two plots of 120'x75' were allotted, when others were in the queue waiting for a single plot.

Items (4) and (6)

30.54 Items No: (4) and (6) which covered plot 27 to Bakshi Abdul Majid the respondent's brother and plot I-B to Bakshi Ghulam Hassain, cousin of the respondent, were both allotted on the same date—20th March, 1961. Document 35 is the order sanctioning the allotment of plot No. 27 while Document 34 is the order sanctioning the allotment of plot I-B. It may be mentioned that plot I-B was of the size 130' x 60'. In the case of the allotment of plot I-B to Bakshi Ghulam Hussain, the main irregularity on which reliance was placed by Government was that the allottee had not made any application and was, therefore, not entitled to allotment. In the reply that he has filed he does not deny this fact that he made no application, but his only defence is that as a businessman he was entitled to allotment like others and gives a list of the same 28 names of businessmen to whom plots were allotted, the names being the same as those mentioned by Ghulam Nabi. In view of the fact that the order sanctioning this allotment (Document 34) was not put up to the Minister for confirmation as Documents 31, 32, 33 and 37 had been done, evidently because Shamas-ud-Din, the Minister for Development had himself noted that no confirmation was necessary in cases where the Prime Minister had himself made the allotment. Besides it had already been decided that in the case of the bigger plots to be allotted to the members of the general public the allotment was to be by the respondent himself (vide proceedings of 23rd April, 1956 referred to earlier). The confirmation of this decision is found at page 61 of the file in a memorandum issued on 19th June, 1956 by the Housing Secretariat—

“Public Sector: 201 applications have been received and 52 have been verified.....Decision about these will be taken by the Prime Minister”.

30.55 As regards the allotment of plot No. 27 to Bakshi Abdul Majid with which item (4) is concerned, it was the case of the Government that Abdul Majid made no application for the allotment of a plot to him. In the reply that he has filed Abdul Majid states that he “prayed for the grant of a plot” in Gandhinagar when he learnt that plots were allotted to all businessmen and traders. In view of this reply the Government had the matter investigated and as a result we find that there was an application dated 31st January, 1956 by the respondent addressed to the Secretary, Low Income Group Housing Board in which he stated that

he would "like to purchase two plots of land in the proposed Gandhinagar township, one in the name of Bakshi Abdul Majid and another for myself. Kindly have these two plots reserved for me". This application for two plots of 90'x65' in Gandhinagar was accepted and a letter was addressed to the respondent on 12th March, 1956 (File No. 33/8/HD/21) by which he was directed to deposit Rs. 2,000/- per plot on or before the 17th March, 1956. He did nothing further on this letter and it is not suggested by either the respondent or by Abdul Majid that the plots allotted to him were by virtue of this application, for Abdul Majid states in his reply that he prayed for the grant of a plot which obviously means that he made an application. Besides the respondent virtually withdrew this application, by reason of making a further unsigned application dated 31st January, 1957 by which he desired to have two plots for himself of the size 75' x 120' each. The only application that is on the file which could relate to Abdul Majid is an unsigned application in which his name appears in type which is also dated 31st January, 1957 in which a request is made for the allotment of two plots of 75' x 120' each, and this is a carbon copy of the respondent's application for two plots just now referred to. No action was taken on either application and in the case of the respondent no plots were allotted to him. In the case of Abdul Majid the application, as stated earlier, did not bear his signature, and he did not on any later date supply the omission. It is not possible to regard the allotment to him of a plot four years later in March 1961 as traceable to this unsigned application. Even in the acceptance letter the portion in the form referring to the application and its date where the details of these are entered in cases where an allotment is in response to an application is struck out (vide File 33-13-259-A). It is obvious that this cannot also have been the basis upon which the allotment was made to him on 20th March, 1961. I am, therefore, satisfied that the case of the Government that Abdul Majid made no application for the grant of a plot to him and that the same was not processed by the Department and that the allotment to him of plot No. 27 under Document 35 was not in response to any application, is made out. There was a further charge by the Government that in respect of the plot allotted to him he had not paid even the nominal consideration that was fixed and this he has not in terms denied, though he has offered an explanation as to why the amount still remained unpaid but as this is not any part of the charge against the respondent, I do not propose to go into it.

3056 The position, therefore, in regard to the first six allotments specified in Allegation 12 is that save in the case of Abdul Rashid they were not in response to any application and that of the allottees Mr. Nasrullah alone who was an officer of the Government, was if he applied entitled to an allotment, but in his case he was not entitled to plots of the size allotted to him. Thus in all the cases the allotment was irregular and improper and all the six allotments were made by the respondent himself.

30.57. Before proceeding further I shall deal with the point that these irregular and discriminatory allotments were also improper because the price fixed for the land was nominal and that really the plots should have been put up to auction. It has already been pointed out that on the 12th May, 1961 barely two months after the allotment of plots Nos. 27 and I-B and within about three months of the allotment of the other plots, it was decided to auction several plots in Gandhinagar under Document 22 and that the auction was held on 30th May, 1961. The bids at the auction were for sums several times the amount fixed as the price of these plots. It was urged by learned counsel for the Government, that the procedure of auction was not adopted for determining the price to be paid for these plots because it was known that if put to auction the price to be paid would be four to five times that fixed by the Government. On these facts the submission was that in the case of these particular allotments the determination of the price to be paid by auction was not resorted to in order to benefit these near relations. I have already pointed out that the case of the respondent is that auction was tried only once and was not repeated. I find that this statement is correct. There were allotments of hundreds of plots and it was only in the case of 34 plots that the price was determined by open auction so that in a very large number of cases besides those of the near relations whose allotments are the subject of attack in Allegation 12 the price was not determined by open auction. In view of this circumstance I do not agree in the contention that there was a discrimination in favour of these relations by the process of auction not being availed of. No doubt if it had been availed of it would have resulted in larger funds being available to the Government, but for reasons not apparent on the files it was decided to make the allotments at pre-determined fixed prices which were much lower than what could have been obtained from the market even to the richer classes of the general public who could well afford to pay the proper market price. The low prices might of course have been an inducement to several to apply and obtain these plots and among them the relations of the respondent did obtain an advantage, but I am unable to find that this was resorted to merely in order to benefit them but as I found that the allotments were irregular in the sense of being without applications and out of turn without considering the priority of earlier applicants, there has certainly been an abuse of power and these relations have obtained pecuniary advantages by reason of the allotments, though in the manner of determining the price payable by them there has been no irregularity.

30.58 This finishes the allotments at Jammu whose propriety is questioned in this allegation. I shall next proceed to detail the history of the scheme at Srinagar with which the rest of the allotments in this allegation are concerned.

30.59 Concurrently with the formulation of the scheme for the establishment of a new township at Gandhinagar at

Jammu, a decision was taken to establish new townships in Srinagar also. By a Cabinet order No. 702-C of 1956 dated 31st March, 1956 an area of 1120 kanals 3 marlas odd in Gogchi Bagh Srinagar was transferred to the Housing Department (vide Document 10). Plots in other areas were also acquired and made available for allotment.

30 60 As seen from File No.37/1/HD/56-C (which relates to the housing scheme at Srinagar), in or about April, 1956 applications were invited from low paid employees in Srinagar on the same terms and conditions on which these were invited in Jammu. The size of the plots to be allotted to the low paid employees had not, however, been determined. Applications were invited from those Government servants who belonged to Srinagar District and who had no house of their own or had inadequate accommodation. In response to this notification 2000 applications were received and were under scrutiny by the end of June 1956. Applications were also invited from officers of the State drawing pay above Rs.400/-per mensem, the last date for the receipt of these applications being 20th June, 1965.

30 61 The applications were subsequently scrutinised and the file records that the number of plots required of the size 32½x45 feet for orderlies was 93, of the size 65x45 feet for low paid employees 988 and 90'x60' size for higher income group 44. On this basis it was suggested that there might be 100 plots of the smallest size, 1050 plots of the middle size and 60 for the higher income group. It was also pointed out that in setting out the number of applications received earlier as 2000, the applications received after the due date had been excluded and that applications from Government pensioners and the general public had not been invited at all and the note adds—

"If these applications are also invited, the number of applications will swell further." (vide page 9 of the file)

The Housing Board met on 15th January, 1957 and approved the issue of acceptance letters in respect of 87 plots of 65'x45' each in Gulab Bagh and 301 plots of 45x65 feet each 157 plots of 50x100 feet each and 100 plots of 30x50 feet each in Gogchi Bagh. It was pointed out that though there was need for low paid officers of 1100 plots of 65'x45' size the number of plots available was only 388, but no allotment letters were immediately issued in regard to these available plots because the plan of the new township had not been drawn up by the Chief Engineer (vide page 11 of the file *ibid*). There was a discussion in the respondent's chamber on 14th May, 1957 at which he gave verbal instructions to the Superintending Engineer and the Assistant Architect to prepare the necessary plans of all the townships of Srinagar before the end of June 1957. This however, was not done and several

reminders were sent to the Architect, and even thereafter it was only a tentative plan that was prepared and was despatched by him by October 1957. These plans were revised from time to time but to the details of these, it is not necessary to refer. The tentative plan drawn up in October 1957 was placed for approval before the respondent as Chairman of the Housing Board. As on that date the correlation between the requirement and the plots available was analysed in a note at Page 12 (notes) of the file 37-1-HD/56-C and this discloses the following:—

Name of township	Plots shown in the plan	Size	Plots required	Remarks
Rajbagh Township	96	120'x75'	Nil	No applications invited for plots of that size up to then.
Bal Garden	54	90'x60'	44-66	Plots meant for officers drawing pay above Rs. 400/- p.m. 44 applications received in time and 22 received late.
Gogji Bagh	600	45'x65'	1030	These plots required for low paid employees drawing pay less than 400/-
Gulab Bagh	87	32½'x45'	110	These required for inferior class.

30.62. "From the above it will be seen that there is a shortage of 343 and 110 plots of 45'x65' and 32½'x45' sizes respectively". I have quoted the above from the file, but from the figures in the tabular statement supra, it would appear that the deficiency was 430 plots in the size 45'x65' and 23 in the case of the plots of the size 32½'x45'.

30.63 At one of the meetings of the Board an item put up for consideration related to a request from a widow of an officer for the allotment of a plot and for the grant of a loan. The decision on this was that this should be kept pending and considered only if there were more plots than required for Government employees at Srinagar.

30.64. Having regard to the inadequacy of the number of the plots available, it was suggested that additional khalsa land in Srinagar for the remaining 343(?) plots of 45'x60' and 110(?) plots of 32½'x45' size should be made available. It will be noticed that no applications had so far been invited for allotment of plots 120'x75' size, and they were at Raj Bagh. As an alternative to this suggestion for obtaining further land by the officers of his Department, the Secretary (Housing) suggested that if the size of the plots at Gulab Bagh was reduced from 65'x45' to 32½'x45' they would meet the requirements of the menial establishment and as regards the larger plots of 120'x75', the Secretary suggested that these plots at Raj Bagh if reduced in size to 65'x45', the requirements of the low paid employees could be fulfilled.

30.65. However, the decision taken was that the size of the plots should not be reduced but that further land should be acquired and 206 kanals and 7 marlas of land was be acquired at Narsingh Garh. At this stage it might be pertinent to point out the proceedings of the meeting of the Housing Board held on 22nd April, 1958 at which the respondent presided (*vide* paragraph 76/notes of file *ibid*). Additional land having been acquired the position as regards the availability of plots was reviewed by the Secretary to the Housing Department in a note dated 10th May, 1958 (page 16—notes). There were at that stage 1100 persons who had applied for and were entitled to, plots. The need and the availability of plots is found analysed in paragraph 82 of this note and it was stated that the requirements of plots based on the number of applications received in time were :—

Larger size plots 90'x60' or 120'x75' ..	..	70	plots
45'x65'	..	1000	plots
32½'x45'	..	100	plots

Having regard to the number of plots at Gogji Bagh and Gulab Bagh of 45'x65' size it was felt that there would be a shortage of 200 plots of this size having regard to the number of applications. Besides there had to be a further 100 plots of 32½'x45' size for orderlies. It was suggested that these might be laid out at Narsingh Garh where 206 kanals odd had recently been acquired. Finally the Secretary noted that the progress of the scheme in so far as it relates to grant of loans and plots had not been finally decided and that "the issues involved require approval and orders of the P.M. This may kindly be done soon." This was on 29th May, 1958 (*vide* paragraph 87 of notes-file *ibid*). We have a note on 18th June, 1958 in which it is stated that "the P.M. was very emphatic that we should go ahead with the scheme at once." As a result of the opinion expressed by the respondent things appear to have proceeded fairly rapidly—the Architect, the Divisional Engineer doing their bit. The position of the plots at the beginning of January 1959 is found recorded in a note of the Housing Department at page 23 of the file. In paragraph 11 it stated—

"Out of about 900 qualified applicants about 450 persons were accommodated in Jawaharnagar and about 100 in Bal Garden.

This leaves about 350 persons still to whom we are committed for allotment". (underlining mine).

That would mean that there were as many as 350 applicants to whom allotment orders had been communicated. Pausing here, I might refer to a note at page 24 of the file which sets out the progress made till the end of the year :—

"The allotment of plots at Suthra Shahi was done this summer at Srinagar after casting lots.....Some plots out of this area were also allotted to officers, like Mr. A. N. Sapru, Secretary Agriculture & C. D. Department, Mr. Ghulam Qadir S.P. IPS, and Mr. G.N. Kotru, S.P. under orders of the Prime Minister. It is believed that the allotment of plots out of this area to orderlies was also made after obtaining the approval of the P. M. verbally."

The Shutra Shahi colony was laid out into 100 plots of 32½x45' for orderlies and 14 plots of 45'x65' for officers. Plots were allotted in September 1958 and possession of the said plots was handed over to the allottees under orders of the Prime Minister on 1st October, 1958. I am mentioning this because at this date Mr. Chunilal Kotwal, Minister of Development was according to the respondent incharge of the implementation of the scheme. The note I have just now referred to also has this endorsement by the Minister incharge—

"Put up on the arrival of the P. M. from Nagpur—8.1.(1959)"
(vide paragraph 116 of notes)

and later on 20th January, 1959—

"D. M. is discussing the matter further with the P. M."
(vide paragraph 120 of notes).

30.66. Evidently there was not very much coordination between the Architect and the Housing Department and the complaint is made by the office of the Secretary, Housing Department (page 27 note dated 23rd July, 1959)—

"The layout shows that only 201 plots (in Narsingh Garh) would be available as against 338 plots or so required by us."

Other defects in the plan were also pointed out and they were desired to be remedied.

30.67. After this acquisition of a further 206 kanals 7 marlas it was intended to mark this area into plots of 45'x65' for allotment to the Low Income Group. It is stated by the Secretary to Government, Housing Department in his letter to the Architect dated 1st April, 1959 (page 69 of the file—correspondence portion)—

"About 360 applicants have yet to get plots and immediately

no other site is available. The intention is, therefore, to accommodate as many allottees, as possible in Narsinghgarh area. It is requested that you will please have a lay out plan prepared and get the same approved by the Prime Minister."

But the position remained tight even by the end of May 1959 as is seen from another letter at page 78 where he refers to the number of persons in whose favour allotment of plots is yet to be made and, therefore, that the plan should make provision for the maximum number of plots from the Narsingh Garh area. Though at one stage the respondent appears to have insisted upon this plan being expedited, there appears to have been a meeting of the Divisional Engineer with the respondent when the former was verbally directed that the layout work might be kept pending for some time till further orders by him and this was communicated to the Architect. In a letter dated 23rd May, 1959 to the Divisional Engineer the Deputy Commissioner, Srinagar says (page 87 of the file,—

".....I would like to inform you that the matter was taken up by the undersigned with the Hon'ble Prime Minister. He has directed me to convey to you that the layout work be kept pending for some time till further orders."

In passing it should be mentioned that this is hardly consistent with the respondent's defence that after the Housing Minister came in, he had nothing to do with the scheme, as it was outside his portfolio.

30.68. The layout plan that was prepared was found to be defective as several of the allottees complained about the nature of the plots allotted to them and so there were re-adjustments and some amount of re-planning. As even after this it was found that the area of land set apart for allotment was not sufficient to meet the demands of the applicants, in September 1961 further land was transferred to the Housing Department. In a memorandum to the Council dated 26th September, 1961 (Document 11) it was stated that 397 kanals 3 marlas and 257 square feet of land had been transferred by Council Resolution dated 31st March, 1956 (vide Document 10). Out of that it stated that 311 kanals 9 marlas and 137 square feet of land had been laid out in 487 plots of 45'x65' size and allotted to eligible applicants under the Low Income Group Housing Scheme at Jawahar Nagar. The remaining area of 85 kanals 14 marlas and 120 square feet had, it was stated, been laid out into 43 plots of various sizes between 1.48 and 2 kanals and that it was proposed to allot these plots to deserving applicants under the Low Income Group and Middle Income Group Housing Schemes. The price of the plots allotted was then determined and this was done by a Council Resolution dated 30th October, 1963 (vide Documents 14 and 15). The price of the plots at Raj Bagh was fixed at Rs. 1250/- per kanal.

30.69. Pausing here I might point out that in the revised plan of Gogchi Bagh area against as many as six plots of 90'x150' and 80'x180' sizes, the word "reserved" is written across. That shows that they were not intended to be allotted immediately as they had been reserved for some purpose. In the affidavit of the Architect Mr. Sidiqi filed in

support of their case by the Government he has stated that these reservations were made at the instance of the respondent. There is no specific denial of this statement in the reply that the respondent has filed and having regard to the express mention of these items as reserved in the two plans and as the plans are shown to have been approved on each occasion by the respondent, I am inclined to accept the statement of the Architect that this reservation was made at the instance of the respondent. As, however, none of these plots are the subject of the allotments in controversy in this allegation, nothing very much turns on this circumstance except that it proves that far from there being no applicants for the plots offered for allotment, plots which were available for allotment were kept back, notwithstanding that there were quite a large number of unsatisfied applicants.

30.70. Under a Cabinet order dated 16th March, 1956, 16 kanals 11 marlas of land which originally formed Nazul land had been resumed by the Government for the purpose of being included in the scheme, but this area had not yet been transferred to the Housing Department for the purpose of allotment to applicants, and so had not been the subject of any allotment up to 1963. The area had been divided into five big size plots, three of them of 4 kanals and the other two of 2 and 2½ kanals each. As these remained unallotted, the Secretary to Government in the Housing Department forwarded to the Council a memorandum dated 30th August, 1963 for the allotment of five plots here (Document 17). The proposal made was that these lands might be transferred from the Nazul Department to the Housing Department for utilisation as housing plots. This was placed before the meeting of the Cabinet on 31st August, 1963 the next day and approved. When this proposal was approved, it was ordered that the allotment of plots be made by the Housing Department (Document 18) and effect was given to this Council resolution by a Government order dated 24th September, 1963 (Document 19). I shall have occasion later to deal with the details of the allotments of these five plots as the allotment of four of these is the subject-matter of other portions of Allegation 12.

30.71. Lastly, it might be pointed out that up to the beginning of 1963 there were 200 applications which had after scrutiny been accepted, and acceptance communicated to the applicants to whom allotments had not been made, and besides as seen from Document 26 there were up to the end of November 1964 as many as 2000 applications which were pending examination and these were cancelled and fresh applications invited in 1964, but with this latter I have nothing to do.

30.72. The net result of the above summary, therefore, is the same as was the case in the house sites at Jammu, namely that there was a very large number of applications and a keen demand to obtain sites and it was really a case of applicants being refused rather than their having to be invited in order to make the scheme a success. The defence of the respondent based upon the alleged unpopularity of the scheme with officers and the general public and the consequent need to set an example by making allotments in favour of friends and relations to induce other people to join in, is just the reverse of the truth.

30.73. With this introductory narrative I shall proceed to consider the rest of the allotments whose propriety is questioned in this allegation. These fall into two categories : (1) The allotments in Jawahar Nagar Extension, and (2) the allotments of four of the plots in Raj Bagh which were transferred to the Housing Department by a Council resolution passed on 31st August, 1963.

30.74. I will first take up the allotment of plots to Abdul Rashid and his group. These comprise—

- (1) One plot No. 28 to his daughter Miss Zamrooda vide Document 38.
- (2) Allotment of one plot No. 42 to his minor son Ghulam Jeelani, vide Document 39.
- (3) Allotment of plots 43 and 44 to himself, vide Document 40.

There is another allotment jointly to his daughter Zamrooda and her husband Mehraj-ud-Din, which will be considered with the next group of allotments of plots in Raj Bagh which fall into a separate category.

30.75. Taking these in that order the allotment of plot 28 to Zamrooda Bakshi was not in response to any application, nor was there any allotment order. There is, however, in the file a list of 38 persons to whom plots had been allotted and the list bears the signature at the end of Mr. Shamas-ud-Din who was the Minister-in-charge and is dated 1st November, 1961 (Document 20). Miss Zamrooda's name is entered in this list against plot No. 28 after deletion of the name of one Dr. K. Muzaffar to whom apparently the plot had originally been allotted. Now Zamrooda Bakshi was allotted a plot of 120'x80' size and this allotment was made notwithstanding that she was a minor, her date of birth being 18th January, 1944 (vide Document 28). Why and how she was preferred to other applicants whose applications were pending and who had priority in the sense, that they were Government employees for whom the scheme was primarily intended, is not explained in the reply. As already pointed out, the only answer of Abdul Rashid in paragraph 8 of his reply was that it was a regular feature of the State to obtain contracts and the like in the name of and on behalf of minors and consequently the allotment of plots in the name of the minors was nothing strange. The fact that there was no application and that it was really a *benami* name for Abdul Rashid which indeed appears to be implicit even in Rashid's reply extracted above, is seen from the file 62-2-HD-37 relating to this allotment. After the allotment for which as I have stated, there was no order, Abdul Rashid wrote a letter on 6th June, 1962 to the Treasury Officer requesting that Rs. 5,000/- being the cost of the two plots allotted to him at Gandhinagar may be credited. This was obviously a mistake for Jawahar Nagar Extension and accordingly four days later after the amount was credited Abdul Rashid wrote another letter on 10th June, 1962 stating that he had deposited an amount of Rs. 5,000/- in the Srinagar Treasury on 6th June, 1962. He went on

to say "this amount may kindly be credited to the account of Miss Zamrooda, my daughter who has been allotted a plot No. 28 in Jawahar Nagar Colony Extension," and thereafter an agreement was entered into with Zamrooda notwithstanding that there were covenants in it by which she agreed to construct the house within a year.

30.76. The next plot which Abdul Rashid obtained in the name of Ghulam Jeelani was plot No. 42. The size of the plot was 79'x180'. The date of the allotment was also 23rd November, 1961. Here again there was no application and there is in the file no confirmation of the allotment by the Minister. Jeelani was a minor, having been born on 14th May, 1946 vide Document 27). In his case also there was no question of his being entitled to allotment and the only point urged in support of the propriety of the allotment is what has already been referred to in paragraph 8 of the reply statement of his father Abdul Rashid. It may be noted that notwithstanding Ghulam Jeelani was minor, he has executed the deed containing the contract which, as stated earlier, contains a covenant that "the purchaser shall within three months commence the construction of the building on the land and complete the same within 12 months and in the event of the failure the Government might rescind the grant."

30.77. On the same day (i.e. 23rd November, 1961) as the allotment to Ghulam Jeelani, Abdul Rashid also obtained two plots Nos. 43 and 44 each of the size of 80'x180'. Admittedly there was no application so far as this allotment was concerned and with this Abdul Rashid had obtained three contiguous plots Nos. 42, 43 and 44 together with plot No. 28—all these without any application having been made. I shall deal later with the submission of learned counsel for the Government as regards the abuse of power by the respondent in the matter of the allotment of these plots.

30.78. Before, however, taking up that aspect of the question, it will be convenient to deal with the allotment of plots in Raj Bagh area because there we have an allotment jointly to Zamrooda and Mehraj-ud-Din the daughter and son-in-law of Abdul Rashid, but apart from the circumstance that this was an allotment to a relation of Abdul Rashid, there are certain other features of the allotment of plots in the Raj Bagh area on which stress was laid by learned counsel for the Government, to which it is necessary to advert.

30.79. Under Cabinet order dated 16th March, 1956, 16 kanals and 11 marlas of land which was originally the Nazool land and which was divided into five plots, had been resumed by the Government. Though adjacent plots in Raj Bagh area had been transferred to the Housing Department for allotment to applicants, these five plots had not been so transferred. I have already pointed out that by a resolution of the Council of Ministers dated 31st August, 1963, the transfer was directed. A Government order (Document 19) was issued in pursuance of this Council decision on 24th September, 1963. Out of the five plots which were numbered 4, 8, 9, 16 and 21, one plot No. 16 N.D. of 4 kanals size was allotted to a stranger, an officer in the Police Department, the rest of the four plots two of 4 kanals each, one of 2½ kanals and one of

2 kanals and 1 marla were allotted to the relatives of the respondent and it is the propriety of these four allotments that is questioned in this part of the allegation. In this context it is necessary to refer to the memorandum submitted to the Council on which the Cabinet decision was based. In it the Secretary to the Housing Department stated—

“Rajbagh area is quite adjacent to Jawahar Nagar Housing Colony and some plots out of this area have already been transferred to the Housing Department and the Department have been able to satisfy the applicants in need of such plots for construction of their residential accommodation. *There is incessant demand from Government servants for allotment of plots in Srinagar City as plots laid out in existing colonies stand already allotted.*

“With a view, therefore, to widening the scope of allotment of plots in Rajbagh area the Housing Department would require the Nazool area referred to above being transferred to the Housing Department.”

It was for this reason that this transfer to the Housing Department was made, but four of the five plots into which it was divided were allotted to the following relations of the respondent, the proceedings for the allotment commencing in some cases even before the date of the memorandum on which the Council resolution was passed—

- (1) Plot No. 4 N.D. of 4 kanals jointly to Zamrooda Begum and to her husband Mehraj-ud-Din, daughter and son-in-law respectively of Abdul Rashid.
- (2) Plot No. 8 N.D. of an extent of 2 kanals 1 marla to Zaffar Ahmed, respondent's wife's brother.
- (3) Plot No. 9 N.D. of an extent of 2 kanals 10 marlas to Hafiz Akhtar and Sugara Hafiz. Sugara Hafiz is the sister-in-law (wife's sister) of the respondent and Hafiz Akhtar her husband.
- (4) Plot No. 21 N.D. of an extent of 4 kanals to Zahur Ahmed and Mrs. Zahur Ahmed. Zahur Ahmed is son-in-law of Bakshi Wali Mohammad, brother of the respondent.

The allotment of these four plots which might be considered together were all made on 12th September, 1963. It will be noticed that though the Council resolution transferring this area to the Housing Department had been passed on 31st August, 1963, the Government order in pursuance of it (Order 242-C) was passed only on 24th September, 1963, a fortnight nearly after the date of these allotments. The order sanctioning the allotment of plot No. 4 N.D. jointly to Zamrooda Begum and Mehraj-ud-Din is Document 41 and is signed by the Secretary to the Government,

but on the margin of Document 41 which is Government Order No. HD-5 of 1963 dated 12th September, 1963 is found this noting—

“This allotment has been made as desired by H.P.M.....”

The writing and the signature on it of Mr. Nag in this note have been identified by Mr. R. L. Zutshi, who was a Stenographer in the Department at the relevant date. “H.P.M.” it is needless to mention meant the “Honourable Prime Minister” (the respondent). With this note the order was forwarded to the Housing Minister Mr. G. L. Dogra who, in token of his acceptance of this note, has noted the word “Seen” and signed beneath it.

30.80. Plot No. 21 N.D. was allotted jointly to Zahur Ahmed and Mrs. Zahur Ahmed under Government Order HD-6 of 1963 dated 12th September, 1963. It is signed by Mr. Nag, Secretary to Government and the noting on the margin is identical except that it says—

“This allotment has been made as desired by H. P. M. If approved G.O. may issue.”

and is signed by Mr. Nag. The Housing Minister to whom it was forwarded endorsed : “Seen” with his initials and thereafter the allotment order was issued.

30.81. Plot No. 8 N. D. and 9 N. D. were originally allotted to Mr. Hafiz Akhtar and Sugara Jalal-ud-Din respectively under an order dated 3rd September, 1963 (Document 43). When the sanction order was placed by the Secretary, Mr. Nag before the Housing Minister, said—

“These plots have been allotted as desired by H.P.M. If approved Govt. order may issue.”

And this is dated 28th August, 1963, that is even before Council resolution directing the land to be transferred to the Housing Department and even before the memorandum seeking such transfer and yet the Housing Minister said “Yes” and signed it. There after plot No. 8 N.D. was allotted to Zaffar Ahmed and No. 9 N.D. to Hafiz Akhtar and Sugara Hafiz jointly. In Document 44 which contains the cancellation of the original allotment under Document 43 and the re-allotment of the plots, the marginal note reads—

“This case was discussed with H.P.M. Revised G.O. as desired by him may issue.”

And it is signed by Mr. Nag and is dated 25th September, 1963.

30.82. Now I shall deal in detail with the points made in respect of these allotments in regard to which it has undoubtedly been established that it was the respondent who directed the allotments.

30.83. Taking first the allotment to Zamrooda and Mehraj-ud-Din, these were the points made—

(1) Zamrooda Bakshi had already been allotted a plot (No. 28) of the size of 120'x80' and if this was in her own right, this would have disentitled Mehraj-ud-Din who was an Assistant Engineer in the Public Works Department and who at the relevant date was in receipt of a pay of Rs. 300/- (vide Document 54 item 1) from obtaining another plot. I am not quite certain about this point because the possession by the wife of a plot or of a house might not according to the rules impose a disability on the husband to claim a plot for himself.

(2) The next point made has, however, greater validity and it was that these allottees made no application and according to the rules governing allotments he or she would not be entitled to allotment at least before those persons who had applied within time were satisfied. Therefore, the allotment to them was discriminatory in their favour.

(3) Even if Mehraj-ud-Din had applied he would not have been entitled to a plot of 4 kanals of land. He would have been entitled only to a plot of 65'x45'. Nor could he get any advantage from the allotment being made in favour of himself and his wife, for his wife, as is seen earlier, had been allotted a plot herself though not entitled and she not being a Government servant would not have been entitled to an allotment at all. I consider, therefore, that the impropriety of this allotment has been fully established.

30.84. The next plot No. 21 N.D. Raj Bagh was allotted in favour of Zahur Ahmed and his wife, Mrs. Zahur Ahmed being the daughter of respondent's deceased brother Wali Mohd. Zahur Ahmed at this date was a mycologist in the Agriculture Department and his salary was stated to be Rs. 300/- per mensem (Document 55). In his case also there was no application by him and so the allotment to him was contrary to the rules and ignored the claims of those who had already applied, besides on the ground that he was not under the rules entitled to the plot of the size allotted to him. Zahur Ahmed had originally been allotted a plot No. 52-A in Jawahar Nagar Extension under Government Order 62-2-B-46 of 1962 dated 3rd November, 1962, but this was cancelled by the same Government Order by which the allotment of a plot in Raj Bagh was made. It is unnecessary to point out that the inclusion of the wife who too made no application as the joint allottee does not improve the position as she was not entitled to any allotment and the impropriety in the allotment of a larger plot to him is not overcome by including the wife as a joint allottee.

30.85. The propriety of the allotment of plot No. 9 N.D. to Hafiz Akhtar and his wife has next to be considered. Hafiz Akhtar was a Deputy Superintendent of Police in September 1963 and his salary then was Rs. 300/- per mensem (vide Document 57). His wife Mrs. Sagara Hafiz (sister of the respondent's second wife) also was a Lecturer then, receiving total emoluments of Rs. 275/- per mensem (vide Document 54 item No. 6). Hafiz Akhtar had originally made an application for the grant of a plot in Narsingh Garh, Srinagar of the size 45'x65'.

In pursuance of this application he had been allotted a plot No. 269 by an order dated 31st March, 1961. At that time his monthly salary was Rs. 150/- per mensem with dearness allowance of Rs. 20/-. He was then on the scale of Rs. 150-10-250 and was an Inspector in the Police Department. He applied for a loan for constructing this house in September, 1961 and the same was granted. He took possession of this plot on 20th June, 1961. The respondent married his second wife in March 1963. On the 20th June, 1963 Hafiz Akhtar applied to the Housing Department expressing his desire to surrender the plot No. 269 allotted to him in Narsingh Garh since he had applied for a plot of land in Raj Bagh. This request was acceded to and he was allotted plot No. 8 N.D. of an extent of 2 kanals 1 marla in his favour and No. 9 N.D. measuring 2 kanals 10 marlas in favour of his wife. These allotments, as stated earlier, were at the instance of the respondent (vide Document 43), but later he was allotted only plot No. 9 N.D. measuring 2 kanals 10 marlas to be held jointly by himself and his wife. This variation which was made in order to provide for the allotment of plot No. 8 N.D. to Zaffar Ahmed—brother of Sugara Hafiz—was a decision reached after discussion with the respondent as noted in the margin of Document 44. No doubt there was an application by Hafiz Akhtar and he had been allotted a medium size plot to which officers drawing his salary would have been entitled under Government orders, but this was varied and he was allotted a plot of far greater extent of 2 kanals 10 marlas, i.e. over five times the size he was entitled to. His wife who, if she had applied for a plot might have become entitled to one but she, however, did not do so, and so was not entitled to any plot. The fact, therefore, that the plot was allotted jointly to the husband and wife does not make it the less improper and the part played by the respondent himself in ordering this allotment is beyond controversy.

30.86. The last to be considered in this group is the allotment of plot 8 N.D. to Zaffar Ahmed. Zaffar Ahmed is the brother of the respondent's second wife Begum Khurshid Jalal-ud-Din. He was drawing a salary of Rs. 310/- per mensem as an Assistant Engineer in the Estates Division (Document 54). I have already pointed out that plot No. 8 N.D. was originally allotted to Hafiz Akhtar (Document 43) the respondent's wife's sister's husband, but the respondent reviewed this later and allotted it to his wife's brother. In the case of this officer as well, he made no application and was, therefore, not entitled to any allotment at all. Besides, he was not entitled to a plot of this size of 2 kanals and 1 marla even if he had made an application. There is no necessity to repeat the active interest taken by the respondent in making this allotment when so many other applicants who were qualified to receive allotment under the scheme, were on the waiting list.

30.87. Having considered the allotment of the four out of the five plots which were transferred from the Nazool Department to the Housing Department in Raj Bagh, it is necessary to make an observation which in reality appears on the surface. The Raj Bagh plots were originally in the Nazool Department, i.e. were State lands. According to the State Nazool Land Rules they could not be the subject of permanent alienation but could only be granted on long term leases for building purposes. For the reason that there were not enough plots

for satisfying those Government employees who were entitled to receive allotments under the Low Income Group Housing Scheme, this plot of land was transferred to the Housing Department by reason of which allotment in permanent ownership became possible. The transfer to the Housing Department had to be approved by the Cabinet and this was done only at a meeting of the Council of Ministers on the 31st August, 1963, but even before that date, obviously in anticipation of this going through, proposals had been initiated for the transfer of these plots to the near relations of the respondent and as has been pointed out each one of these four allotments was as a result of the verbal orders passed or the instructions given by the respondent to the Secretary which was acquiesced in by the Minister in charge. It, therefore, appears as if the entire object of this transfer of the Raj Bagh lands to the Housing Department was for the purpose of their being allotted to these relations of the respondent, and this makes the allotments all the more improper.

30.88. I shall now proceed to deal with the part played by the respondent and the charge of abuse of power as seen in the allotment of plots 43 and 44 to Bakshi Abdul Rashid, No. 28 to Zamrooda Begum and plot No. 42 to Ghulam Jeelani which I had reserved for later consideration. These were covered by Documents 40, 38 and 39 respectively, though in the case of the allotment to Miss Zamrooda there is no order sanctioning the allotment, there is only an entry in the allotment register. In these three cases the name of the respondent does not occur in the orders pursuant to which the allotments were made or in the allotment orders themselves. This feature has presented me with some difficulty in accepting the case of the Government that these improper allotments were made at the desire or at the instance of the respondent.

30.89. Taking first the allotment of plots 43 and 44 to Bakshi Abdul Rashid, the first point to be noticed about the sanction is that as usual it was not forwarded to the Minister for confirmation and that is the case also with the allotment of the contiguous plot No. 42 to his minor son Ghulam Jeelani and both of these are of the same date 23rd November, 1961. Besides all the three are plots of the size 80'x180'. That these three plots were dealt with together is seen from a telegram despatched from Srinagar on the 2nd December, 1961 by which the Department of Works and Housing inquired of the Development Secretary who was then at Jammu, whether possession of plots 42 to 44 might be handed over. The telegram to which this is a reply is not on the file, but nothing much turns on that. The reply of the Secretary, Development Department which was evidently telegraphed, as the same is found on the back of the telegram itself, stated that the "possession letter" would be issued when agreements are registered. The agreements were registered on the 12th December and possession of these three plots was handed over to Abdul Rashid. I have already drawn attention to the fact that as regards the plot allotted to Miss Zamrooda, the price was paid by Bakshi Abdul Rashid and it was at his suggestion that it was credited to the account of his daughter. It is, therefore, clear that the allotment of these four plots—two to Bakshi Abdul Rashid and one each to his son and daughter—were all for his benefit and in none of these cases was the

any application and again in none of these cases where the papers placed for the confirmation of the Minister before the issue of the orders. Learned counsel for the Government submitted that no confirmation was obtained because as seen from the endorsement on Document 37 being an allotment of two plots to Abdul Rashid in Gandhinagar at Jammu, the Minister Mr. Shamas-ud-Din considered this unnecessary in view of the allotments having been directed to be made by the respondent himself. This is one aspect of the matter. The second is this: I have already drawn attention to the fact that the respondent had ruled as early as April 1956 that the allotments of the bigger plots, that is to officers drawing above Rs. 400/- per mensem and to the general public, would be made by himself. No doubt that order is to be found in the file pertaining to Gandhinagar, but they were nevertheless proceedings of the Housing Board which was a common Board for the implementation of the scheme both in Srinagar and in Jammu. One might, therefore, proceed on the basis that the order then made was applicable to both the towns of Jammu as well as Srinagar. Possibly it was to counteract or overcome this inference that the respondent laid great stress in his reply on the Housing Board ceasing to function in 1957 or in 1958, but as the allotments impugned have all been made after 1960, it matters little as to whether the Board came to an end in 1957 or in 1958. The inference which the respondent desires me to draw from the dissolution of the Board is that thereafter, it was the Minister-in-charge of Development or of Housing who was responsible for the allotment and that unless it was specifically made out from the files that the allotment was at his instance or at his direction, it should be presumed that these allotments—proper or improper—were made by the Minister-in-charge.

30.90. Though this argument looks attractive, it overlooks the things as they actually happened as seen from Document 25 which is rather important in this connection. In January 1963 Audit raised an objection that the loans sometimes after the Board ceased to function were irregular. These loans were after 1959, sanctioned by the Secretary of the Housing Department. The Accountant General pointed out that there had been no amendment to the Government order by which the Low Income Group Housing Board with the Prime Minister as the president and certain Ministers as members and the Chief Secretary as Secretary, were designated as the authority for sanctioning the loans. There had been no delegation of power to the Secretary, and the Accountant General, therefore, desired that sanction of the Government be obtained to regularise the cases in which the Secretary, instead of the Board, granted the loans. Document 25 is the note prepared by the Department of Works and Housing in answer to this audit objection. In this it is pointed out that the last meeting of the Board was held on the 22nd April, 1958 and thereafter no meeting was held, but then there was a full-fledged Housing Department under the control of the Housing Minister and these loans were granted by the Housing Department. Orders were, therefore, solicited for regularising the past action and also for formally dissolving the Housing Board and vesting the power formerly exercised by the Board in the Minister of Housing and Housing Secretary. When this note was placed before the Works Minister Mr. Shamas-ud-Din, he pointed out that to talk as the audit did of the Board ceasing to function was

not correct. He said—

“It is quite apparent that by creating a separate Ministry for Housing (in 1957) the Govt. had no intention to re-constitute such Board.....of course the Housing Secretary and the Ministry is functioning by and large in consonance with the procedure laid down by the Board when initially the Housing Scheme was introduced in the State and it does get instructions from the Hon'ble Prime Minister off and on. Therefore the question of regularising the objections etc. does not appear to me very necessary. Even if it is still needed, the file may be put to Hon'ble Prime Minister for his advice so that matter is processed further.”

Now the net result of these observations is that though the Board did not function as such, the principles laid down by the Board and the procedure evolved by it was still being followed by the Works Minister as well as the Housing Secretary. In other words, the decision of the Housing Board in 1956 regarding the respondent having to concur in the allotment of the larger plots still held good. I take it that it was precisely for these reasons that in the case of the allotment of the plots (items 1-6) in Gandhinagar that we have the endorsement in Document 37 already referred to. This is further strengthened by the marginal notings in regard to the allotments at Raj Bagh. In view of these circumstances I consider that even in the absence of a specific reference to the respondent in the orders of allotment of these three plots, they were allotted on the direction of or at the instance of the respondent.

30.91. What remains for consideration are the allotments of items 4-10 in Jawahar Nagar Extension and in Narsingh Garh and I shall take them up in the order in which they are found in the notification.

30.92. *Item No. 4* is the allotment to Shamas Ahmed Khan. Shamas Ahmad Khan who is the brother of respondent's second wife Begum Khurshid Jalal-ud-Din was a Security Officer attached to the respondent. He was an Inspector of Police and was on the scale of Rs. 150-10-250. By a Government order dated 4th November, 1961 he was allotted plot No. 1 in Jawahar Nagar Extension of an area of 2 kanals. The order of allotment does not make any reference to its having been made on the directions or orders of the respondent. There is one further matter to be mentioned in regard to this allottee. His sister Miss Khurshid Jalal-ud-Din the wife of the respondent had been allotted plot No. 278 in Narsingh Garh, and he himself had been allotted No. 277 in Narsingh Garh. Both of these allotments were in December 1960. In March 1961 Shamas Ahmad Khan wrote to the Secretary to Government, Housing Department that his sister did not want the plot, but wanted it to be transferred to her brother. This was accepted by an order dated 13th March, 1961 and Shamas Ahmed Khan became the allottee of both the plots Nos. 277 and 278 in Narsingh Garh. These two plots were later re-numbered 312 and 313. But before this was done, the office of the Works Ministry raised a query as to whether Shamas Ahmed Khan being merely a Police Inspector drawing a salary of Rs. 150/- could be permitted to have two plots. The Minister

Mr. Shamas-ud-Din's note on this reads—

“Does it mean that Mr. Shamas would have two plots and is it admissible under the rules.”

The office pointed out that in certain cases officers drawing above Rs. 400/- per mensem had been allotted two plots though in the present case the salary of the officer was less than that figure. The Minister, however, agreed that in this case also that relaxation might be permitted and thereafter an order was issued directing the transfer of Mst. Khurshid's plot to Shamas Ahmed Khan. It was after this that one more plot of an extent of 2 kanals, plot No. 1 in Jawahar Nagar Extension was allotted to him and this is the plot which is the subject of inquiry under this allegation. The two earlier plots were of the size 65' x 45' each.

30.93. The ground upon which the matter is sought to be brought within the scope of this inquiry is that Shamas Ahmed Khan was the respondent's brother-in-law, being the brother of his second wife. But the marriage, it is now agreed, took place only in March 1963 and as these allotments were long prior to that date, it could not be said that he was any relation on whom by an abuse of power pecuniary advantage was conferred, which is the only subject-matter of inquiry under the notification. Learned counsel for the Government, however, submitted that Shamas Ahmed Khan was a Security Officer and was attached to the respondent, but this, however, does not improve matters so far as the inquiry is concerned, for unless there is an abuse of power by which a person who on the date of the abuse was a relation is shown to have benefited, there is no jurisdiction in the Commission to inquire into the propriety of the transaction. I, therefore, do not propose to go into the matters mentioned in respect of item No. 4.

**Item No. 5—Miss Khurshid Jalal-ud-Din
(Now Mrs. Bakshi Ghulam Mohd.)**

36.94. She was allotted plot No. 2 East Jawahar Nagar of an area of 10800 square feet (120' x 90') (Document 47 dated 4th November, 1961). The order of sanction is on the file and is signed by Shri Noor Mohd., Secretary to Government in the Housing Department. She was an officer in the Education Department of the Government drawing a salary of less than Rs. 400 per mensem. In Document 20 in which a list of allottees is set out with the signature of Mr. Shamas-ud-Din Minister for Housing at the end and dated 1st November, 1961, the allotment to her of this plot is mentioned. Now the points urged against the propriety of this allotment are two : (1) That there was no application and yet an allotment was made ; and (2) that she was a Government servant drawing less than Rs. 400/- per mensem and yet such a big plot as 90' x 120' was allotted to her. But, however, it is seen that this allottee was not on the date of the allotment a relation of the respondent because the marriage between them is said to have taken place only in March 1963. For this reason I do not think it necessary to consider further the propriety or otherwise of this allotment and the partplayed by the respondent in effecting it. This must, therefore, be eliminated from the charge.

30.95. Item No. 6 is Bakshi Ghulam Ali who was allotted two plots Nos. 275 and 276. Bakshi Ghulam Ali was a cousin of the respondent being item No. 11 of Schedule I Part 'B'. He was a Field Publicity Officer in the Information Department. He started on a salary of Rs. 350/- in the scale of Rs. 200-400. He filed no application and would not under the rules have been entitled to two plots each of 45' x 65' size. So far as the allotment to him was concerned, it was done on the express orders of the respondent, for we have a telegram from the Chief Engineer, Srinagar to the Development Secretary at Jammu dated 30th March, 1961 (Document 52). That telegram reads --

"PURSUANT ORDERS KASHPREMIER KINDLY ALLOT NARSINGHGARH TWO PLOTS GHULAM ALI AND ONE PLOT HAFIZULLAH".

In pursuance of this telegram we have the Government order (Document 53) by which two plots 275 and 276 in Narshingh Garh were allotted to Ghulam Ali Bakshi and one plot No. 269 was allotted to Sheikh Hafiz Ullah. We are not concerned with the allotment of plot No. 269 because that is not the subject of the charge.

30.96. In paragraph 28 of his reply the respondent states this in relation to this allotment to Ghulam Ali Sheikh--

"Shri Bakshi Ghulam Ali is a collateral of the respondent. It is denied that no applications were made by them. The respondent has no recollection of having directed the Chief Engineer to send the telegram as alleged. It is noteworthy that the other name mentioned in the telegram is that of Shri Hafizullah who is the son of the maternal uncle of Shri G. M. Sadiq, the present Chief Minister. At any rate both Shri Bakshi Ghulam Ali and Shri Ghulam Nabi Sheikh (item No. 9) were in their own rights entitled to the allotment of plots under the scheme and there was no dearth of plots."

I need hardly add that I prefer the text of the telegram to the respondent's recollection as set out in his reply, though the reply was filed after he had seen the copy of the telegram. As regards the allotment of plot 269, what is relevant in the present context is that these plots were allotted on the orders of the respondent and the telegram shows that his defence that after 1957 or 1958 it was the Minister-in-charge who alone had the responsibility for allotment is not correct. I do not see how the respondent improves his position by referring to the allotment to Hafizullah, for assuming that too was improper, it only shows that people approached the respondent to pass improper orders and that he obliged them, and that in any event he had to be approached to make these allotments, whether they be proper or improper.

30.97. Item No. 7 is in regard to the allotment of plot No. 383 of the size 45' x 65'. Ghulam Mohd. Sheikh was the brother-in-law of Abdul Rashid (item 13 in Part 'B' Schedule I). He was a low paid

employee employed in the Electrical Department. He made an application for the allotment of a plot in Narsingh Garh, Srinagar on 5th December, 1960 and the Government order sanctioning the allotment in Jawahar Nagar (Document 48) was passed on 8th December, 1960. The plot allotted to him, as stated already, was of the size 45' x 65', and as he was an employee of the State Government, he was entitled to a plot under the scheme. The allotment to him was approved by the Development Minister on the file. The only point made against the propriety of this allotment is that whereas persons who had applied for plots years before were kept waiting, still an application by this relation of Abdul Rashid was ordered within three days of its being filed. No doubt, this is a circumstance which might induce some suspicion, but it is admitted that there is nothing in the evidence to connect the respondent with the ordering of this application which was done by the Minister-in-charge. The allotment was of the plot of a size to which the allottee was entitled and being a small size plot, there is no question of having to obtain the sanction of the respondent under the terms of the Board's resolutions already referred to. In the absence, therefore, of any specific reference to any order of the respondent I hold that no case of abuse of power has been established in the case of this allotment.

30.98. Item No. 8—Ahmad Ullah Sheikh is a brother of Ghulam Mohammad Sheikh (item 14 Part 'B' Schedule I). He was also a Supervisor in the Electrical Department, a low paid employee. He too made an application on 5th December, 1960—in fact the application by one brother is a carbon copy of that of the other. The order sanctioning the allotment was also passed on the 8th December, 1960 and it received the approval of the Development Minister Mr. Shamas-ud-Din on the 8th December, 1960. In this case also there is no reference to any part played by the respondent and the plot being of the size 45' x 65' and the person being a Government employee drawing less than Rs.400/- per month, there was no need to obtain the approval of the respondent. In this case also I hold that no case of abuse of power by the respondent has been established by the Government.

30.99. Item No. 9 is Sheikh Ghulam Nabi Item 15 Part 'B' (Schedule I). He too is a brother of items 7 and 8 just now discussed. He was employed as a Mechanic in Government Transport. He too filed an application which was undated but receipted on 11th July, 1960 and it was immediately granted and plot No. 199 at Narsingh Garh allotted to him. The allotment order was confirmed by the then Minister Mr. C. L. Kotwal on 14th July, 1960. This plot also like the two earlier ones was of the size 45' x 65'. Except the fact, therefore, that this applicant was allotted a plot out of turn and immediately on receipt of his application whereas others who had filed applications long before were on the waiting list, no impropriety is suggested in the allotment in the present case. Just like the earlier two instances of items 7 and 8, in this case also there is no reference to any direction by the respondent or any action on his part to induce the Minister or the officers to make the allotment. In the circumstances I hold that no case of abuse of power against the respondent has been made out in this case.

30.100. Lastly we have the case of Mrs. Aisha Begum (item No. 10) who was allotted plot No. 57 at Jawahar Nagar. Aisha Begum was the respondent's wife's brother's daughter and she was not an employee of the State Government. She made no application and yet she was allotted plot No. 57 of an extent of over 2 kanals. The address of Aisha Begum is stated in the order sanctioning the allotment (Document 51) as "care of Mr. Mir Nasrullah, Deputy Commissioner". The only signature in the sanction order is that of the Housing Secretary and there is no order of confirmation either, even though in the cases of items 7, 8 and 9 who were low paid employees of Government were normally entitled to a plot and to whom the plots of the size intended for them were allotted, we have the confirmation of the Minister. The only inference that I can draw is that the confirmation of the Minister was not sought because of the respondent's verbal orders. Again, it is somewhat strange that the address of the allottee should be given as care of Mr. Mir Nasrullah. It is evident that this was for the purpose of identifying the individual as one to whom allotment would have to be made. For the reasons which I have mentioned in regard to the allotment of the plots to Abdul Rashid and his daughter, I consider that this is a case in which the allotment could have been made only at the instance of the respondent. This allotment did not obtain the confirmation of the then Housing Minister Shamas-ud-Din from which it follows that it was the respondent who must have confirmed it. In paragraph 25 of his reply after denying the arbitrary and discriminatory allotment, the main defence of the respondent was—

"The matter of allotment of plots was under the direct and complete control of the Ministry of the Housing Deptt. The respondent had nothing to do with the allotment and had given no orders as alleged or at all."

Enough has been said already to show that this statement does not represent the facts and reference has been made to the orders passed by the respondent in the applications which would belie the theory that he left everything to the direction of the Housing Minister. It is unnecessary to repeat the notes on the margin in the several allotment orders discussed already in which the allotments are seen to have been made as a result of the direct orders of the respondent. If this defence is put aside, then it follows that on the basis of the decisions taken in April 1956 as well as the summary of the practice that prevailed as stated by Mr. Shamas-ud-Din in his note to the Audit objection in Document 25, I consider that the Government have satisfactorily made out that in the case of this allotment to his wife's brother's daughter of this very large plot of land, it must have been at the instance of the respondent himself.

30.101. As already pointed out, as many as 200 applications which had been accepted and to whom acceptance had been intimated, were awaiting allotment whereas this allotment was made even without an application.

30.102. What now remains for consideration is the pecuniary advantage gained by these relations as a result of these allotments. I might premise the discussion by pointing out that though in the case of Jammu, sale by auction was tried in the case of some plots in May 1961, no such attempt was made even once in Srinagar. The prices of the plots were fixed by the Government *ad hoc* not on the basis of the market value of the plots, but having regard to the object of the scheme, namely to provide accommodation to low paid employees of the Government and a similar strata of the general public. Taking into consideration the financial ability of this group, the prices were fixed at a low level and were, therefore, a case of a subsidised rate being charged. As material for ascertaining the market value of land in village Narsingh Garh between the years 1961-1963, the Government have filed a tabulated list of sales which had taken place during those years (Document 29). This document gives a list of five sales effected in 1961, one in 1962 and another one in 1963. The average price per square foot yielded by the five sales of 1961 is Rs. 1.19 nP per square foot, while the sale in 1962 yields a figure of Rs. 1.78 nP per square foot. The last of these sales in 1963 which is a fairly extensive plot of over 3 kanals gives a rate of Rs. 1.33 nP per square foot. Even taking the average of these three at Re. 1.00 per square foot (it actually works to more), it would work out at Rs. 270.00 per marla. The price charged by the Government was Rs. 500.00 in the case of plots of the size 45'x65'. In the case of plots of larger sizes the Housing Department was charging a fixed rate of Rs. 1250.00 per kanal in Raj Bagh and Jawahar Nagar areas. This was regularised and by a resolution of the Cabinet of 1963 sanction was accorded for fixing the price of plots at Raj Bagh transferred by the Nazool Department to the Housing Department at Rs. 1250.00 per kanal. It will be seen that this works out at very much less than the market price of these plots. The pecuniary benefit obtained by the several relations of the respondent to whom plots were allotted both in Jammu and in Srinagar has been tabulated showing the market price of the plots as per the average of Document 24 in the case of the plots at Jammu and taking Re.1.00 per sq. ft. as the market price of land at Raj Bagh and at Jawahar Nagar Extension in Srinagar as per the actual sales during 1961 to 1963 of which a list is given in Document 29. In the tabulation the amount paid by the allottee has been mentioned and the pecuniary advantage has been calculated after deducting this sum from the market value of the plots. The pecuniary advantage gained by the six allotments at Jammu totals Rs. 1,02,117.00, while the nine allotments in Srinagar have resulted in a pecuniary advantage of Rs. 1,05,017.68 nP similarly calculated. Together the total comes to Rs. 2,07,134.68 nP. The details are as given below :—

ALLOTMENT OF PLOTS IN GANDHINAGAR, JAMMU

Name of allottee.	Plot No.	Date of allotment	Size of the plot	Market price as per Document 24.	Amount paid	Pecuniary advantage.
(i) To relations in Part 'A' of Schedule I						
				(Rs.)	(Rs.)	(Rs.)
Bakshi Bashir Ahmed	34 & 35	7-2-1961	75'x120' each	24,000 (12,000 per plot)	5,000	19,000.00
Bakshi Abdul Rashid	38 & 39	7-2-1961	75'x120' each	24,000 (12,000 per plot)	5,000	19,000.00
Bakshi Ghulam Nabi	40 & 41	7-2-1961	75'x128' each	24,000 (12,000 per plot)	5,000	19,000.00
Bakshi Ghulam Hassain	1-B	20-3-1961	60'x130'	14,400	2,283	12,117.00
Bakshi Abdul Majid	27	30-3-1961	75'x120'	12,000	Has not paid any sum.	12,000.00
					Total :	81,117.00
(ii) To relations in Part 'B' of Schedule I						
Mir Nasrullah	36 & 37	7-2-1961	75'x120' each	24,000 (12,000 per plot)	3,000	21,000.00
					Total of items (i) and (ii) ..	1,02,117.00

ALLOTMENT OF PLOTS IN JAWAHAR NAGAR EXTENSION AND RAJ BAGH, SRINAGAR.

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Name of allottee	Plot No.	Date of allotment.	Size of the plot.	Minimum average market price as per Document 29 (Re.1 per sq. ft.)	Amount paid.	Pecuniary advantage.
(i) To relations in Part 'A' of Schedule I						
Zamrooda Bakshi	28	1-11-1961	80'x120' (9,600 sq. ft.)	(Rs.) 9,600.00	(Rs.) 5,000.00	(Rs.) 4,600.00
Ghulam Jeclani	42	23-11-1961	79'x180' (14,220 sq. ft.)	14,220.00	3,264.50	10,955.00
Bakshi Abdul Rashid	43 & 44	23-11-1961	80'x180' each (28,800 sq. ft.)	28,800.00	6,611.57	22,188.43
Zamrooda Begum and Mehraj-ud-Din	4 N.D. (Nazul Deptt)	12-9-1963	4 kanals (21,600 sq. ft.)	21,600.00	5,000.00	16,600.00
Total ..					54,343.93	

Name of allottee	Plot No.	Date of allotment.	Size of the plot.	Minimum average market price as per Document 29 (Re. 1 per sq. ft.)	Amount paid.	Pecuniary advantage.
(ii) To relations in Part 'B' of Schedule I						
Zahur Ahmed and Mrs. Zahur Ahmed	21 N.D.	12-9-1963	4 kanals (21,600 sq. ft.)	21,600.00	5,000.00	16,600.00
Hafiz Akhtar and Sugara Hafiz	9 N.D.	20-9-1963	2½ kanals (13,500 sq. ft.)	13,500.00	3,125.00	10,375.00
Zaffar Ahmed	8 N.D.	26-9-1963	2 kanals 1 marla (11,070 sq. ft.)	11,070.00	2,562.50	8,507.50
Ghulam Ali Bakshi	275 & 276	31-3-1961	45'x65' each (5,850 sq. ft.)	5,850.00	1,000.00	4,850.00
Aisha Begum	57	12-7-1962	2½ kanals (13,500 sq. ft.)	13,500.00	3,158.75	10,341.25
Total ..					50,673.75	
Total of items (i) and (ii) ..					1,05,017.68	
Total of pecuniary advantage in Jammu and Srinagar ..					2,07,134.68	

31.1. The first item of charge to be considered in this miscellaneous group in which the respondent is alleged to have abused his official position to benefit himself is that contained in Allegation 35. This reads :

“Bakshi Ghulam Mohammad abused his official position, and misappropriated funds, in the following transaction :—

- (i) The Transport Controller was asked to submit a recommendation regarding the purchase of the car belonging to Col. Ghulam Qadir as a result of which this car was purchased on 24-11-1954.
- (ii) Col. Ghulam Qadir had, at the instance of Bakshi Ghulam Mohammad agreed to give this car as a donation for the Charar-i-Sharif Ziarat.
- (iii) The payment due for the car viz. Rs. 15,000/- was received by Bakshi Ghulam Mohammad but did not find its way to either the Charar-i-Sharif funds or to Col. Ghulam Qadir. This amount was in fact misappropriated by Bakshi Ghulam Mohammad.
- (iv) The Transport Department was not at the time in need of such a vehicle and did not in fact make more than nominal use of it after it was purchased.

31.2. Though it would be noticed that the charge is as it were split into four heads, it may conveniently be divided into two parts: (1) That a car which was not needed by the Transport Department was purchased at the instance of the respondent. (2) The sale proceeds of the car which was intended for and donated by the vendor to the shrine at Charar-i-Sharif and put into the hands of the respondent, was not passed on to the charity but was misappropriated by him.

31.3. The facts in support of this charge as elaborated in the Statement of Case and the affidavits in support, may now be briefly set out. In November 1954 the respondent asked Col. Ghulam Qadir *alias* Harry Nedou to make a donation to the Charar-i-Sharif and the latter offered to donate his Buick car. The respondent thereupon directed the Transport Controller Mr. Aga to put up to him a proposal for the purchase of this car and a proposal was accordingly put up on 23rd November, 1954 stating that the vehicle was needed for use as a staff car, and that the price of Rs. 15,000/- which he had been able to fix for it was reasonable. The note with the proposal was approved by the respondent the next day, and the Traffic Manager was immediately ordered to make arrangements to secure the amount necessary for the payment of the price. The Traffic Manager drew Rs. 15,000/- from the Jammu and Kashmir Bank on the same day by a “self” cheque and took the amount to the respondent and handed it over to him in the presence of the respondent’s P. A. Mr. Warikoo. The respondent when asked for an acknowledgement, promised to send one later, but failed to do so. As the Department had no voucher for the payment,

they obtained one from Col. Ghulam Qadir on 27th November, 1954. The amount which was paid into the hands of the respondent was never transmitted by him to Charar-i-Sharif as would be seen from the reports and statements of account of the charity. Affidavits by, among others Mr. S. M. Aga, Mr. Ghulam Qadir, Mr. Noor-ud-Din Bandey, the Traffic Manager and Mr. Warikoo have been filed to substantiate the respective parts they played in the above story.

31.4. The respondent in his reply has characterised the entire charge as fabricated. He denies that he asked for a donation from Ghulam Qadir for the Charar-i-Sharif or that the latter promised to donate his Buick car. In this context he refers to the absence of any special relationship between himself and Ghulam Qadir at the time, consequent on the action he had taken against Sheikh Abdulla in the previous year replacing him as Prime Minister and putting him in detention. Ghulam Qadir was the brother-in-law of the Sheikh, and he therefore stated that there was no likelihood of his having approached him. Coming to the purchase of the car, he admits that he approved the purchase, but that was because of the note put up by the Transport Controller Mr. Aga and the recommendation he made regarding the need for the car which he believed to be correct. He denies that the price of the car Rs. 15,000/- was paid into his hands and points to the receipt of Ghulam Qadir as an answer. Of Course, if he did not receive the sum, the question of his paying or not paying the same to the Trust would not arise.

31.5. The first question that requires consideration is whether this car was purchased even though there was no need for it. Before, however, doing so, I might dispose of a defence raised by the respondent that he was not likely to have approached Ghulam Qadir for any contribution in November 1954 in view of the strained relationship between them consequent on the manner in which he had dealt with Sheikh Abdullah. I am not able to accept this story of unfriendliness. In the first place, Sheikh Abdullah was ousted from the Prime Ministership in August 1953 and the fact that Ghulam Qadir continued as Military Secretary to the Sadr-i-Riyasat till 1955 is evidence that there was nothing seriously wrong in the relationship between him and the respondent because of his conduct towards Sheikh Abdullah. Next we have the circumstance that in the proposal of the Transport Controller of 23rd November, 1954 which the respondent approved, it is pointed out that the car which was proposed to be purchased belonged to Ghulam Qadir who desired to dispose it of before leaving the State, and if the feelings between the respondent and him were so unfriendly as is alleged, the former was not likely to have approved of this purchase. Lastly, and this is a circumstance to which I attach the greatest importance, it is admitted that Ghulam Qadir became a partner with the respondent's daughter-in-law as late as 1963 in the business of conducting the Nedous Hotel; (the circumstances of that transaction being the subject matter of Allegation 20) and in view of what transpired then, it is impossible to accept the story of this amount of ill-feeling between the respondent and Ghulam Qadir as improbabilising either the respondent's approaching Ghulam Qadir for a donation or as affording an explanation for the affidavit which Ghulam Qadir has filed in support of this charge.

31.6. This, however, does not conclude the matter, for I have still to determine whether the Government have been able to bring home the charge that the car was not needed. In support of this contention, the Government rely on two circumstances—

(1) There were already 8 cars which were being used as staff cars and so there was no need for this ninth.

(2) That during a period of four years during which the vehicle was with the department it was stated to have run only 306 miles.

31.7. These I shall now proceed to consider. It is established that at the date of the purchase of the Buick, there were eight cars—4 Hillman, 2 Buick and 2 Chevrolet. But we have no evidence of the actual condition of these 8 vehicles to contradict the statement in Mr. S. M. Aga's proposal (Document 1) that the Government had no decent staff car and therefore sought the sanction of the respondent to purchase this car. The log books of these other staff cars have not been produced though called for by the respondent, it being stated that they were not available. Though I accept the explanation for their non-production, yet in the absence of these log books I cannot determine the condition of these other cars. Further we have no evidence as to the date of the purchase of these 8 cars and in particular of the Chevrolets and Buicks which alone could be classed as cars fit for use by V.I.Ps. visiting the State. No doubt the Buick whose purchase is in controversy was a 1947 model purchased in 1948 and so about six years old, but for a car of that make had not been much used—having run less than 30,000 miles before the purchase as seen from the reading in the milometer at the time of the purchase.

31.8. It was next stated at the bar that the price of Rs. 15,000 was excessive for a second-hand car which had been purchased six years before for Rs. 13,000 odd. But that ignores the rise in the prices of cars between 1948 and 1954. In any event the payment of an excessive price is not the subject of the charge nor even in the statement of the case which was filed to explain the allegation as notified and I do not therefore take any notice of it. The net result of the above discussion is that it is not established that the car was purchased even though not needed. Before concluding I have only to point out that though the statement by Mr. S. M. Aga the Transport Controller in his affidavit that he had put up the proposal to purchase the car on the direction of the respondent had been denied by the latter the Government did not choose to examine him before me and in consequence I ignore the suggestion, which if established might have gone some way in establishing the first part of the charge as not made out.

31.9. The second circumstance relied on to show that the car was not needed, was based on the very slight use to which it was put during the period from after its purchase till August 1960. Here again, we have the handicap arising from the absence of the log books of the other staff cars. It was submitted that if as was suggested by the respondent, the other cars were not "decent" and proper and so the second hand Buick had to be purchased, this one should have been more frequently

used, and that this was not reflected by the mileage recorded in its log book (Document 7). I am unable to agree. If this Buick was in good condition and there is no indication otherwise, it should have been made available only to very distinguished visitors as it was a luxury vehicle and the use to which this car was put would depend on the number of such very distinguished guests whom the State had to entertain. It is true that between 1955 and 20th May 1958 the car had run only 306 miles (mileometer at purchase read 29,864 and on 20th May, 1958 30170) but between 20th May, 1958 to 12th August, 1960—a period of just over two years—nearly 6500 miles. Besides the log book of the period before 20th May, 1958 is not before me and if a reference were made to the file of the Transport Controller regarding this car, there is a note by him dated 15th December, 1954 directing the Works Manager to have the car cleaned and kept in the garage and not to take it outside the workshop premises without his orders. It is, therefore, possible that it was used on very special occasions, on the express orders of the Transport Controller which might be an explanation for the shortness of the distance run by it. I cannot necessarily infer from the mileage up to 1958 that the car was not needed and that its purchase was unnecessary. I have, therefore, no hesitation in repeating that the first part of the charge as not established.

31.10. The next question is whether it is established that Rs. 15,000 the price of the car was paid into the hands of the respondent for being paid over to the Charar-i-Sharif, and that without paying it over, he misappropriated the amount. As preliminary to this charge is the story that the respondent approached Ghulam Qadir for a donation to the Shrine and that the latter agreed to gift the proceeds of the car which he had. The only evidence in support of this version is the statement to that effect in the affidavit of Ghulam Qadir and this has been denied by the respondent. I shall deal with the acceptability of this statement when considering the other parts of his affidavit. The further statement of Ghulam Qadir which logically flows from his version of the origin of the proposal to sell his car, is that the sale price of Rs. 15,000 was not paid to him, though a receipt was taken from him. This, of course, is negative for if believed, it would only show that he did not receive the money. The positive case that the amount was paid to the respondent is sought to be made out by the affidavits of the Traffic Manager Mr. Banday who claims to have paid the money to the respondent on 24th November, 1954 on the direction of Mr. S. M. Aga the Transport Controller (a statement corroborated by the latter in his affidavit) and by Mr. Warikoo an officer on the personal staff of the respondent at the relevant date, who claims to have witnessed the handing over of the money. Both of them speak to a demand from the respondent for a formal receipt which it is stated the respondent said he would send. If these statements are believed, there is no doubt that the charge of misappropriation set out in the allegation would be proved.

31.11. When Mr. Khambata made his submissions on this part of the case, I pointed out to him that in accordance with the procedure I had indicated on 7th August, 1965 as that which I would follow in judging of the acceptability of statements found in affidavits whose truth had been denied by the respondent, this part of the charge could

not be held established except by adducing the oral evidence of the deponents of the several affidavits—in particular of Messrs Ghulam Qadir, Banday and Warikoo. I further drew his attention to the circumstance that in the case of Ghulam Qadir, there was the fact that he had signed a stamped receipt acknowledging receipt of Rs. 15,000 (Document 5) but he was now denying the truth of the recital in that document, and that in the case of the other two, besides there being no document in support of their statements of paying the amount to the respondent the receipt in the hand of Ghulam Qadir (Document 5) directly contradicted their statements.

31.12. Learned counsel agreed with these observations of mine and promised to consider whether he would produce those deponents for oral examination and the further consideration of this allegation was thereupon adjourned on 12th July, 1966. Learned counsel, however, intimated to me on 4th September, 1966 that after considering all the circumstances he had taken the decision not to call these deponents for oral examination.

31.13. On the record as it stands, I have no hesitation in finding that the charge of misappropriation which is implicit in the allegation is entirely baseless. I have only to add that for the same reason the preliminary part of the story of Ghulam Qadir bringing in the Charar-i-Sharif into the sale of the vehicle is also not made out and is hereby rejected.

31.14. Allegation 35 is, therefore, without any substance and I accordingly record a finding to that effect.

32.1. The next charge in this group is that contained in Allegation 38 which reads as follows:—

“During the period 1957-60 Bakshi Ghulam Mohammad by abuse of his official position obtained undue pecuniary advantage for himself, inasmuch as he obtained a credit of Rs. 2,015/- in October, 1958 against two used carpets handed over by him to the Government Arts Emporium, Srinagar against rules, and also obtained during 1958-63 irregular and excessive discounts on purchases made by him from the Emporium.”

As would be seen, the charge falls into two parts: (i) that Bakshi Ghulam Mohammad obtained in October 1958 a credit for Rs. 2,015/- against two used carpets handed over by him to the Government Arts Emporium, Srinagar; and (ii) that during the period 1958-63 he obtained irregular and excessive discounts on purchases made by him from the Emporium. It would be convenient to take and dispose of the second part of the charge before dealing with the first.

32.2. In support of the second part of the Allegation my attention was drawn to an order dated 19th July, 1951 signed by the respondent himself when he was Deputy Prime Minister by which the General Manager of the Kashmir Government Arts Emporium was authorised, with effect from the date he took over, to sanction discounts in favour

of customers of the Emporium up to 10 per cent within his discretion (Document 27). It was stated that the limit thus placed by the order of the Minister, continued to be in force during the years mentioned in the Allegation and the gravamen of the charge against the respondent was that notwithstanding that the General Manager had authority to allow a discount only up to 10 per cent, the respondent had through the exercise of undue influence or abuse of official position as Prime Minister obtained discounts much in excess of this figure even up to or beyond 50 per cent of the marked price. It will be noticed that the charge against the respondent is that these irregular and excessive discounts were obtained by him on purchases effected during the period 1958-63. The evidence placed before me in respect of this portion of the charge related to purchases effected by the respondent during periods anterior to 1958. They related to the period 1955 to December 1957. Mr. Khambata frankly conceded that on the basis of these documents (documents 28 to 31) he could not sustain the charge in the form in which it is now found. He faintly sought to suggest the Government's position as being that the figure "1958" in the Allegation as notified was a mis-print for 1953. It is admitted that there has been no erratum published in respect of this error, as had been done in the case of a few others of this type *vide*, for instance in Allegation 14. I cannot possibly accept this argument and I have no authority to amend the notification or read it differently from the manner in which it stands. It is, therefore, clear that I must hold that the second part of this allegation is not made out.

32.3. The case of the Government in respect of the first part of this charge as set out in their Statement of Case and supported by some affidavits filed in that behalf is briefly this. In October 1958, the respondent sent two carpets to the Srinagar branch of the Kashmir Government Arts Emporium, as carpets obtained by him from one Ahmed Posh, and which he was returning as he did not like them and for which he desired to be credited with their price which he stated was Rs. 2,015/-. The officials thereupon gave him credit for the sum, entering the item as being the value of two carpets returned. The gravamen of the charge was that the carpets were used carpets which had not been purchased from the Emporium, and so the respondent was not entitled to have them purchased so to speak by the Emporium, the amount credited being much in excess of their value at the time. It was alleged that the transaction which was improper was brought about by the abuse of his official position.

32.4. It was first stated that Ahmed Posh said to have been mentioned by the respondent as the person from whom he had purchased the carpets was never in the carpet business and that he had not and could not have supplied any carpets either to the Emporium or to Bakshi Ghulam Mohd. It was further stated that the books of account neither of the Branch nor of the Head Office of the Emporium showed any sale of carpets to the respondent for several months prior to October 1958. From these circumstances it was urged that the story both as regards Ahmed Posh, as well as a purchase from the Emporium of carpets which were "returned" in October 1958 were false. On this, the contention was, that the impropriety or misconduct alleged was made out.

32.5. The reply of the respondent was briefly this. He never mentioned to anyone that he had purchased the carpets from Ahmed Posh and that this name was an invention of the department. A friend of his desired to have two carpets of a certain size for a total value of Rs. 2,500/-. One day on return from his office he entered the Emporium building and told the Branch Manager his requirement and desired him to send two carpets of the size etc. mentioned to his residence. The Branch Manager took to his residence two carpets as directed and informed the respondent that their price was Rs. 2,015/-. This amount he immediately paid. This was in October 1958. The respondent could not inspect them immediately as he went away on tour and when he returned he found on examination that the carpets did not answer his requirements as to size etc. He, therefore, got the Branch Manager to take them back and credit him with the amount which he had originally paid, namely, Rs. 2,015/-. The Branch Manager accordingly took them. The Emporium made out a bill of the outstandings due from him to the end of October, 1958 and submitted it on the 1st of November. The amount demanded was Rs. 7,684.24 which was arrived at after giving him credit for Rs. 2,015/- being the value of the two carpets which he had returned to the Branch Manager and he paid the amount of the bill and obtained a receipt thereafter.

32.6. Coming now to the merits of the rival versions, certain features emerging from the entries in the books of account of the Emporium might be noticed. The "return" or the delivery of the carpets was, according to both the parties in October 1958, and as a fact the credit for Rs. 2,015 given to the respondent is entered in the books in October 1958 and has been taken into account when the bill for the outstandings due from him up to 1st November, 1958 was made up and this was sent to him which he cleared by payment. The entry in his ledger page (Document 13) reads "By amount as per J/1/ c/o (cost of) 2 carpets size 16'x10' and 15'x10' returned by the party at Head Office)—Rs. 2,015/-" and immediately after this is recorded the receipt on 1st November, 1958 of Rs. 7684.24 "By amount received against last balance....". This is repeated in a consolidated statement of account forwarded to him regarding his transactions between the years 1953-1959 (Document 14). This credit in his favour is balanced in the books of the Branch office by a debit raised against the Head Office "imprest account." The journal entry as regards this reads :

"A/c H.O. Imprest—To Hon G. M. Bakshi Prime Minister—(being c/o of 2 carepts size 16'x10' and 15'x10' purchased (for) cash by the party from H.O. is to be debited to H.O. as the party had returned back the two carpets to H.O. Store—vide debit note No. 3820" (Document 17)

and the ledger entry is similarly worded.

32.7. In the middle of December 1958 there was a change in the personnel of the Stores Department of the Head Office Stores and when the charge was handed over, a list of the carpets in the Store was prepared and we find among the items inventoried "2 carpets—no purchase memo" with the letters "B.S." evidently standing for Bakshi

Sahib—put against the entry (Document 19). For the first time on the 31st March 1959 we have in these accounts a debit raised against Ahmed Posh and for “c/o 2 carpets returned” (Document 20). The debit against Ahmed Posh is continued thereafter. My object in setting out these entries in such detail is to elucidate two points. First that the name of Ahmed Posh is introduced for the first time only on the last day of the Financial Year—apparently to balance the credit that was given to the respondent and thus square the accounts. This would show that the name of Ahmed Posh could not have been mentioned in October 1958 when the carpets were “returned”, for if it was, it is impossible to believe that it would not have found a place in the entry relating to the credit for Rs. 2,015/- in October 1958 itself. I am therefore not prepared to believe that the respondent mentioned the name of Ahmed Posh in October 1958 when he returned the carpets. The other curious feature of this entry is that, though Ahmed Posh is treated as the seller of the carpets, he is debited with the price without any indication in the registers that the two carpets were his property and were in the Stores in some suspense account. The manner in which the entry relating to Ahmed Posh reads as well as the date when it comes into existence are calculated to create the impression that the introduction of his name is a clumsy attempt at trying to square a transaction which did not precisely fit into the pattern of the normal dealings of the Emporium.

32.8. It now remains to consider the case on the basis of established facts. These are that two carpets of the sizes indicated earlier were delivered to the Emporium by Bakshi Ghulam Mohd. and he was credited with Rs. 2015/- as being their value. The use of the word “returned” in the entries might indicate that they were initially purchased from the Emporium but, I am satisfied that the story by the respondent of their having been purchased from the Emporium is negatived by the books of the Emporium. The books of account both of the Branch and the Head Office of the Emporium from 1957 have been examined and they disprove this version. But that, however, might not be final or conclusive, for the respondent says that the manager of the Branch (who at that time was Bakshi Wali Mohd, no relation of the respondent) took the two carpets to his residence and delivered them there. There is, therefore, a possibility of the carpets having been got elsewhere by the Branch Manager, possibly again without the respondent knowing that it was so. In my opinion, this would not be material so far as the gravamen of the allegation is concerned. I understand the material basis of the charge to consist in this, that he got credit for Rs. 2,015/- by handing over two used carpets which were not worth that sum. In the course of the argument I put to Mr. Khambata and he agreed with me, that as admittedly two carpets had been handed over to the Emporium and were found in their stock and stores as shown by their books of account, the only question for consideration for determining the impropriety of the transaction would be (a) whether the carpets returned were used ones; and (b) whether they were worth the price of Rs. 2,015/- for which credit was given at the time when in October 1958 they were handed over to the Emporium. It was not disputed that there is no documentary evidence in proof of the assertion in the allegation that the carpets delivered to the Emporium were used ones. In none of the entries relating to the two carpets are they described as used ones. Nor

is there any evidence as regards the value of these carpets in October 1958 and of such value being less than Rs. 2,015/- for which credit was given. In these circumstances I must hold that the charge is not made out. In view of this finding of mine I do not consider that any purpose is served by scrutinising in more detail the entries in the books of account of the branch and the head office of the Emporium at Srinagar which record the return of the carpets and the credit for Rs. 2,015/- being allowed to the respondent as the value of these carpets and I must add that Mr. Khambata agreed with me when I pointed that the entries are to say the least unintelligible and irreconcilable with one another. I must, therefore, hold that the charge is not established.

33.1. The third charge in this final group alleges that the respondent misappropriated certain donations given to him for the National Defence Fund, by paying them into his private banking account. This is the subject matter of Allegation 36 which runs:

“Bakshi Ghulam Mohammad abused his official position by misappropriating contributions from the National Defence Fund by remitting to the Central Fund only a portion of the contributions received.”

33.2. The following facts in relation to the starting of the National Defence Fund in the State and the operation of its accounts are not in controversy.

33.3. In view of the Emergency created by Chinese aggression in 1962 a Defence Fund Committee was set up in the State by Government Order dated 27th October, 1962. The Committee was composed of 12 members with the Prime Minister as Chairman and his Private Secretary as its Secretary. Rules were framed in connection with the collection of the funds and for depositing the funds collected into the bank and all these were detailed in the Government Order of the 27th October, 1962 referred to. Machine-numbered receipt books were issued for collection of donations and receipts from this book were issued on receipt of amounts as donations to the fund. An accountant in the office of the Prime Minister one John Ahmed was required to maintain regular accounts concerning the realisations made with respect to these funds. A current account No. 385/3.7.10 was opened in the name of the National Defence Fund with the Jammu and Kashmir Bank Ltd. at Srinagar on 30th October, 1962 to be operated upon by either the Prime Minister or the Chief Secretary. The rules laid down that all contributions and donations received for the fund should be deposited into the said account.

33.4. After amounts were collected a cheque for Rs. 1 lakh was drawn on this account by the respondent as the Prime Minister and Chairman of the Committee and was handed over to the Defence Minister when he came over to the State in connection with the said purpose. So far as this account was concerned, on the 3rd October, 1963 the respondent on the eve of his relinquishing office addressed a letter to the Manager of the Jammu and Kashmir Bank Ltd., Srinagar directing him

to transfer the balance amount standing in the account, to the State Bank of India for credit to the Central National Defence Fund account.

33.5. During the currency of this account the respondent admittedly collected various amounts totalling Rs. 78,041 and these amounts were paid by the respondent into a separate account also with the Jammu and Kashmir Bank Ltd. which was numbered 417 opened in his own name. Out of the amounts thus paid in he issued a cheque dated 5th August, 1963 for Rs. 50,000 in favour of the Defence Minister and presented him with the said cheque "on behalf of the people of Jammu & Kashmir for the welfare of our troops in Ladakh and NEFA guarding the frontiers." At the time the respondent relinquished his office there was in this account a balance of Rs. 28,039.40 which stood to his credit. He gave no instructions to the bank as to the future of the account as he did in the case of the other account and, therefore, the amount even now stands to his credit.

33.6. The charge against the respondent is that this second account No. 417 was his personal account and that he paid into it sums really intended for the National Defence Fund and that though he drew on 5th August, 1963 out of it Rs. 50,000/- for payment to the Defence Minister for the welfare of troops, the balance remained and still remains subject to his control and dominion and that thus the respondent had been guilty of misappropriating amounts donated for a public purpose.

33.7. As I have already stated, the opening of these two accounts is admitted. In regard to the second account No. 417 which was opened on 6th August, 1963, there is a sharp difference between the case of the two sides. I shall be referring to the defence of the respondent immediately, but before I do so, I might indicate the points upon which the stress is laid on behalf of the Government.

(1) In the first place it was stated that when there was a National Defence Fund with a bank account opened, operated by a Committee appointed under a Government resolution, there was really no need for the opening of a second account unless it be that the other was a private account.

(2) That even if it was desired to open a separate account for paying in contributions towards the "welfare of troops" as distinguished from the National Defence Fund, the fund ought to have been opened in the name of the respondent as Prime Minister and not in his own name and really in his individual capacity.

(3) That into this account were paid not merely cheques which were donations or contributions to the National Defence Fund but also personal monies belonging to the respondent such as a cheque for a loan obtaining by him. This was further relied on as an indication that the account was really a personal account of the respondent into which public funds were deposited.

(4) When the respondent relinquished his office as the Prime Minister of the State, he gave instructions as to the disposal of the National

Defence Fund under account No. 385 but gave no instructions as regards this account No. 417 opened in his personal name. He thus clearly evinced his intention to retain control over this account even after he relinquished his office as Prime Minister.

33.8. Before considering these and other miscellaneous submissions, it would be convenient to refer to the defence of the respondent. I am omitting from consideration the verbal criticisms or the argumentative points but confine myself to what might be called the defence on the merits and it is this: It is true that a new account was opened on 6th August, 1963, but this was because it was desired that there might be a separate fund for the "welfare of troops" as distinguished from a general fund like the National Defence Fund. This account was opened by the respondent not as an individual but as the Prime Minister of the State. All the cheques paid into it were contributions or donations received from merchants and others for this fund and the story that he paid into it a cheque which was really a personal loan to himself is false. The said cheque for Rs. 10,000/- to whose details I shall refer later—was really a contribution to the fund and not a loan to himself. The only cheque which he withdrew from this account was for Rs. 50,000 which was handed over to the then Defence Minister Mr. Chavan in 1963 and the rest of the amount stands in that account and has not been touched by him. At the time when he relinquished office, he directed his personal staff to instruct the bank to transfer the fund and he is unable to say why this has not been carried out. He disclaims all ownership over the fund or to the amounts standing to his credit in it.

33.9. In view of these being the respective cases, the matters in controversy may be stated to be the following :—

(1) Was this account into which admittedly contributions for a public charity were paid in, the personal account of the respondent or was it an account which he had opened as the Prime Minister of the State ?

(2) Closely connected with this is the question as to whether any personal monies of his—an amount advanced to him as a loan—has been paid into this account ?

(3) Did he intimate to the Bank regarding the disposal of the amount standing to his credit when he relinquished office ?

(4) Assuming he did not do so, what is the inference to be drawn from his conduct ?

33.10. I shall now set out very briefly the facts in relation to this account No. 417. As stated earlier, the account was opened on 6th August, 1963 at a time when there was already an account for the National Defence Fund. The account opening form is Document 8. It is undated and is signed by the respondent. What the respondent relies on to support his case that he did not intend to open a personal account but only an account as the Prime Minister of the States is the

description of the occupation of the signatory as Prime Minister. I do not, however, consider that the respondent can rely very much on this, because it is consistent with its being merely a description of him to identify him, particularly as it does not occur in the space reserved for filling in the name of the constituent. I do not, however, consider this as conclusive as to the intention with which the account was opened.

33.11. The total number of cheques paid into this account is nine and the first date on which any cheque was credited in the account is the same as that on which the account was opened which was on 6th August 1962 (vide Document 9). On that date seven cheques were paid on and the other two on the 7th and 8th August, respectively. The first cheque is by Ali Shah and Sons for Rs. 5,041/- and dated 29th July, 1963 and was drawn in favour of the respondent personally (Document 15). The second cheque was that of Shahdad Forest Co., Forest Lessee, Sriragar for Rs. 10,000/- dated 30th July, 1963. The cheque itself is Document 16 and is a "self" cheque which was paid into this account and cleared. In the counterfoil of this cheque (Document 17) its purpose is noted as "National Defence Fund through Hon'ble Prime Minister, Bakshi Ghulam Mohd." and this is also the version in their cash book (Document 18). The third cheque is by Gani Joo of Messrs Gani Joo Ahsan Joo, forest lessees (it would be recollected that Gani Joo was a partner with Ghulam Nabi in his forest contracts). He issued a "self" cheque for Rs. 5,000/- on 30th July, 1963 and it was endorsed on the back by the respondent and paid into this account. The fourth cheque is by Mohd. Maqbool, proprietor Tasleem & Co. for Rs. 10,000/- which is dated 2nd August, 1963 and is made out in the name of the respondent himself and was paid into the bank into this account. It is this sum of Rs. 10,000/- that is stated by Government to have been a loan and which, though was his personal property had been paid into this account, thereby indicating that this account itself was his personal account. I shall deal with this cheque and the case of it being a loan later. The fifth cheque was a "self" cheque by one Girdharilal Raina for Rs. 5,000/- dated 3rd August, 1963. The drawer of the cheque has himself signed it on the back and the amount has been collected and credited to account No. 417. Now in regard to this donation the Government rely on the circumstance that the donor originally issued a crossed cheque bearing No. 377321 on the United Commercial Bank in favour of the "National Defence Fund" (Document 20) but that later this cheque was returned and the "self" cheque for Rs. 5,000/- bearing No. 377334 dated 3rd August, 1963 (Documents 21 and 22) was issued. This is relied upon as evidence that the respondent was insisting upon donors giving him cheques which he could pay into his personal account as distinguished from an account which he could operate as the Prime Minister. Whatever be the inference to be drawn, that the "self" cheque was given in lieu of an earlier crossed cheque in favour of the National Defence Fund is also noted in the accounts of the firm. At page 116 of the ledger there is this entry on 3rd August, 1963 (Document 23)—

"To self cheque issued in lieu of crossed cheque to Mr. Wanchoo for National Defence Fund—Rs. 5000."

A cheque for Rs. 10,000/- from Mohd. Abdullah Sheikh is the next item

of receipt. Here, as in the previous case, first a cheque was issued in favour of the National Defence Fund for Rs. 10,000 on 31st July, 1963 (see Document 24 counterfoil of Mohd. Abdullah Sheikh). This was evidently returned and in its place a cheque dated 4th August, 1963 was got (Document 25) which was a "self" cheque for Rs. 10,000. In the counterfoil of this cheque also (Document 26) it is noted that this is for "the National Defence Fund" but what is relied on here is that the respondent was insisting upon "self" cheques or cheques made out in his own name so that he could have the cheques collected and paid into his own account. The cheque for Rs. 3,000 issued by Ghulam Quadir Daga on 4th August, 1963 is the next (Document 28). This also is a "self" cheque which was discharged on the back by the drawer. The counter-foil (Document 29) contains a note saying that it was for the Defence Fund and was handed over to Mr. P. N. Wanchco. The next cheque is one for Rs. 25,000 by the Deputy Transport Commissioner (Enforcement) (Document 31). This also was a "self" cheque and discharged on the back by the drawer—Chchail Singh. In the counter-foil (Document 32) it is noted that it was for "the Hon'ble Prime Minister's Fund for presentation to the Defence Minister." The last of these cheques is one for Rs. 5,000/- from Ghulam Rasool, a contractor (Document 33). This also is a "self" cheque dated 6th August, 1963 and has been collected on behalf of the respondent by the bank. The counter-foil of this cheque (Document 34) says that it was in favour of "self" for the Defence Fund. Now I have completed the narrative of these payments which totalled Rs. 78,041 out of which Rs. 50,000 was drawn for payment to the Defence Minister and the balance remained in the account. Before proceeding further, I might summarise the result of this examination of these cheques. Out of the nine cheques paid in, seven were "self" cheques, and two those of Ali Shah and Mohd. Maqbool—made payable to the respondent by name. In the case of two of the "self" cheques, they were preceded by other cheques for like amounts drawn in favour of the National Defence Fund and the "self" cheques were issued in substitution of the earlier ones which were cancelled. In the case of eight of these cheques (all save that of Maqbool) the notings in the counter-foil and in some cases their accounts show that the purpose of the payment was as a contribution to the National Defence Fund.

33.12. I shall now proceed to set out and examine the several points which have been raised by Government in the light of these proved facts and the defence of the respondent.

33.13. The first point urged against the respondent is that he opened account No. 417 when there was already an account for payment in of funds collected for the National Defence Fund. His explanation is that the Defence Minister was visiting Srinagar on the 5th August and that he desired to present him with monies specially earmarked for the "welfare of troops" as distinguished from the National Defence Fund which contemplated the use of the fund for other purposes also. I consider that this is corroborated by the terms of Document 38 which is a letter addressed by the respondent to Mr. Chavan, which accompanied the presentation of the cheque for Rs. 50,000. It is dated 5th August 1963 and it refers to the cheque as "for welfare of our troops in Ladakh and NEFA"

that the respondent desired to have a loan for some urgent need and that it would be repaid within a very short time, no demand was admittedly made for its repayment for two years—and no explanation has been offered for this. I should add that no demand has been made up-to-date either, but I am ignoring this.

(2) If the story of the loan is true and the respondent really wanted money for his personal use, it is inconceivable that he did not utilise the money for his purpose and I have had no explanation for this feature either. It is admitted that the amount which he paid into account now under examination was never drawn by him, nor am I able to accept the only other possible case that he told Maqbool that he wanted a loan, when he had no need for the sum.

(3) If as is admitted the respondent told John Mohd. that the account was for the purpose of getting a fund for the welfare of jawans and that is established by his drawing on it for Rs. 50,000, there is no explanation as to why he paid this cheque into such an account.

33.19. The payment of the cheque into this account is strong evidence that that cheque represented monies of the same type as the others which were paid into this account and if as admittedly these others were not loans, this also was not a loan.

33.20. In the face of these features, very much more convincing evidence than the affidavit of Mohd. Maqbool would be needed to persuade me to hold that it was a loan. Mohd. Maqbool is no doubt dead but the partners of the firm or the employees could have been called to testify to the nature of the transaction. In the absence of such evidence I am unable to uphold the Government case that Rs. 10,000/- was given as a loan.

33.21. Before concluding this part of the case it is necessary to refer to the photostat copy of the counterfoil of the cheque previous to that which was issued by Mohd. Maqbool for Rs. 10,000/- in favour of Bakshi Ghulam Mohammad, on which reliance was placed by the respondent to prove that the amount paid to him by cheque was not as a loan but for the National Defence Fund, just as the other cheques, originally drawn for the National Defence Fund, but later replaced by ones to him personally. The purpose of the cheque bearing the previous number is indicated in the counterfoil by certain initials which are indistinct and not easy to read, but in so far as these are decipherable, the letters are not N.D.F., as the respondent says they are. Besides these indistinct letters there is a word in the second line which reads 'coy' or 'coy' which might be a contraction for "company"—certainly not consistent with the cheque being for the N.D.F. Of course, the words Bakshi Ghulam Mohammad and the figures Rs. 10,000/- are there, but there is nothing to indicate when they found their place there. I

am saying this because the parties were directed to file all originals of which they are attaching copies to their statements or affidavits into the office of the Commission at the time of their filing their statements etc. In this case, the respondent states in his affidavit to which he attached the photostat of this counterfoil that after taking the photograph he had returned the original to Tasleem & Co., a strange procedure for which there was no explanation. I am not persuaded that the original would have been returned—particularly as the counterfoil was thought to be of some value to the respondent and of no immediate importance or value to Mohd. Maqbool. When Tasleem & Co. were called on to produce the original they excused themselves by stating that Mohd. Maqbool was dead and that the original cheque counterfoils could not be traced. If the originals were available, it would have been possible to see more clearly the writing and determine whether any portion was an over-writing or a later addition. In the absence of the original and with the photostat alone before me, I am unable to uphold the contention of the respondent that the photostat of the counterfoil produced by him establishes that the cheque in dispute was given to him expressly for being paid into a fund for the welfare of the Troops. But in view of the conclusions I have reached based on other features this does not materially affect the case.

33.22. The conduct of the respondent in not forwarding instructions to the Bank as to the disposal of the remaining monies in the account when he relinquished his office was the next point which was pressed by Government. The respondent's answer that he did instruct or alternatively that he gave directions for this being done, is not proved to be correct. There is no letter to the Bank in regard to account No. 417 on the lines of Document 7 dated 3rd October, 1963—a few days before he laid down office—in respect of the N.D.F. account which bears his signature. If instructions were given, there can be no reason why they were not carried out, but that apart it would not be effective without his signature to the instructions. I am, therefore, not prepared to accept his statement as regards his having forwarded instructions to the Bank. Besides this statement is seen to be inconsistent with the proved fact that the Bank were forwarding to him half-yearly statements of account. He no doubt denies having received them, but I am clearly of the opinion that having regard to the debits raised as seen from Document 9 regarding the postage for sending these statements and the general practice of Banks, that these were sent. If sent, they must have been received. The forwarding and receipt of the statements of account therefore establish (1) that the respondent gave no instructions to the Bank; (2) that if the respondent gave any thought to the matter, he knew that no instructions had been forwarded to the Bank, and (3) that the balance was still standing to his credit and on which he could operate.

33.23. But these circumstances have to be considered in the light of the following:—

- (a) The accountant John Mohd. continued in service in the

office of his successor and he knew that the account existed as well as the purpose for which it was opened ;

(b) there was in the Government files correspondence with the Defence Minister (Documents 38 and 39) which showed the particular purpose for which a cheque was drawn on this account and the reference to the account was, therefore, capable of being traced ;

(c) the respondent though he received the statements of account never attempted to draw any monies from this account for his personal use and, therefore, no dishonest intention can be imputed to him ; and

(d) in any event it was at the worst a case of inadvertence in regard to which in view of the other circumstance, no adverse inference of criminal intent could be drawn.

33.24. The result is that I hold the charge not established.

33.25. Before proceeding further, I should add that, in view of the position taken up by the respondent, disclaiming all interest in the monies in his account, and asserting that he had instructed the Bank as to the disposition of the monies, it is but proper that he should now forward instructions to the Bank to enable the account being operated by the Government for fulfilling the purposes for which the monies were collected by the respondent I am confident that he would do so.

34.1. The last of the charges in this group is that in Allegation 34 which reads as follows :—

“During the period 1957-63, Bakshi Ghulam Mohammad misappropriated and converted to the use of his family a Landrover (given in 1963 the provisional number J & K A 3030) purchased for Rs. 17,609.50 in March, 1957 from the Central Motors, Kashmiri Gate, Delhi, out of Government funds, allotted to the “Dehat Sudhar Department” of the Government.”

34.2. Stated in plain terms Shri Bakshi Ghulam Mohd. is charged with having misappropriated and converted to the use of his family a Land Rover motor vehicle purchased for the Community Development Department at a cost of over Rs. 17,000.

34.3. In regard to this allegation, certain facts are not in dispute, and it would be convenient to narrate them before entering on a discussion of those matters which are in controversy.

34.4. It is common ground that on 21st January, 1957 a sum of Rs. 5 lakhs was made over by Government to the Trade Commissioner at Delhi to the credit of the Dehat Sudhar (Community Development) Department for the purchase of equipment for the department. An order was placed with Messrs Central Motors, New Delhi for the supply of a Land Rover jeep for the use of this Department. It is stated by the Government that the purchase was made on the verbal orders of the respondent, but though this is denied, the denial is not of much significance because he admits that he had "directed the Trade Commissioner to immediately send a Land Rover to be purchased out of the funds placed at his disposal". Documents 25 and 26 were issued by the Trade Commissioner on 19th March, 1957 for the quick passage of the vehicle, whose chassis and engine numbers were given—across the border check post at Lakhanpur. In these documents it is stated that the vehicle was being sent on Government account. The fact that the Land Rover thus despatched was taken delivery of by Shri Avasti, the then Private Secretary to the Prime Minister, on 27th March, 1957 is not in dispute, the same being established by the Delivery Receipt (Document 3) signed by Mr. Avasti.

34.5. A bill dated 6th April, 1957 for Rs. 17,609.50 (Document 4) was duly presented by Messrs Central Motors to the J & K Trade Commissioner at Delhi and their officer made the payment on the 10th, but before doing so, ascertained over the telephone from the Prime Minister himself that the vehicle had been delivered. The Development Commissioner who was in charge of the Community Development was, however, not intimated of this purchase immediately but this was done only in January 1958 when the receipt issued by Messrs Central Motors for the price was despatched (Document 9). At about the same time the accounts in respect of the Rs. 5 lakhs advance kept with the Trade Commissioner were despatched to the Development Commissioner. The account showed, along with other debits, one for the purchase of a jeep for Rs. 17,609.50. On 5th April, 1958, the Development Commissioner wrote to the Trade Commissioner (Document 11) seeking information regarding the details of the vehicle purchased, and to whom and when it was delivered, adding that the Department was not aware as to where the jeep then was. The Trade Commissioner immediately sought information from the Central Motors as to the person to whom the vehicle was delivered, but along with it replied to the Development Commissioner on the basis

of information available in his office, stating—

"This vehicle was supplied by the firm to the Prime Minister at Jammu. The delivery verification was obtained direct on the telephone from the Hon'ble Prime Minister who also directed that the bill may be paid on presentation in this office. However, on receipt of the reply from the above firm you will be informed accordingly".

(See Document 12).

The firm replied on 21st May, 1958 (Document 13) stating that the vehicle had been delivered to Mr. Hans Raj Avasthi, P. A. to the Hon'ble Prime Minister and this reply was also forwarded to the Development Commissioner in June 1958.

34.6 We have next a letter in the office file dated 8th August, 1958 (Document 14) addressed by the Development Commissioner to Mr. Avasthi the P. A. to the Prime Minister making detailed enquiries regarding this vehicle but as the receipt of this letter has been denied by Mr. Avasthi himself, I shall proceed on the basis of the letter though written and despatched not having been received by the addressee. The next letter in the file is of date October 1964 (Document 15) long after the respondent ceased to be Prime Minister, and, apparently during the course of the investigation which led to the setting up of this Commission. This subsequent correspondence can, therefore, be left out of account.

34.7 The identity of the persons in whose use the vehicle was between May 1957 and April—May 1963 is in controversy, but it is common ground that the vehicle was registered in the name of the respondent's wife Begum Bakshi as her property in June 1963. It was thereafter sent for repairs to Fairdeal Motors in 1964 (Document 23 dated 15th September, 1964) and was seized by the Police from there on 9th October, 1964 (Document 24).

34.8 Before proceeding further, certain of the matters in dispute may be disposed of. The respondent in his reply denies his presence at Jammu on 27th March, 1957 when delivery of the vehicle was taken by Mr. Avasthi. But this, however, is of no significance because he admits the telephone conversation with the Trade Commissioner in April 1957, a conversation of which there is an immediate written record in the form of an endorsement by the Trade Commissioner on Document 4. In this endorsement the Trade Commissioner records—

"the delivery verification has been obtained direct on the telephone from the Hon'ble Prime Minister who also

directed that the bill may be paid on presentation in this office from the funds he has placed at our disposal."

34.9 The next question is as to what happened to this vehicle. It is admitted in the affidavits filed in support of the respondent, that the vehicle was with the Prime Minister in his election campaign in April-May 1957. It is really as to what happened to it subsequently that there is dispute. I shall be referring to the versions put forward by the respondent but before doing so, complete the narrative as gathered from the documents which clearly identify this vehicle. It is said that this Land Rover Jeep which was plying without a registration certificate was checked by the Police in April 1963, but that on being informed that the vehicle belonged to Begum Bakshi the same was released. This is not vouched by any documentary evidence and I am therefore, discarding it. One fact here is not disputed. This jeep was registered in the name of Begum Bakshi in June 1963. A registration number JK A 3030 was allotted for this jeep in the relevant Register. An advertisement was inserted in Government Gazette on 26th June, 1963 (vide Document 2) stating that an application for the registration of a Land Rover Jeep, without specifying the name of the applicant, the chassis and engine number of which were given had been received, that the relevant documents in respect of this jeep were said to be lost and calling on any one objecting to the registration to file their objection with the registering authorities. No objection having been received the jeep was registered in the name of Begum Bakshi. The chassis and engine number here given being the same as those to be found in the delivery receipt Document 3, establish the identity of the vehicle thus registered with that purchased for the Community Development Department in March-April 1957.

34.10 I am omitting all reference to the affidavits in which it is stated *inter alia* that this registration was effected at the instance of the respondent through directing Mr. S. K. Raina to get it done, as this fact is not supported by documents nor have the deponents been examined before me and subjected to cross-examination. But in my opinion nothing turns on this. Again there are a number of affidavits of persons who being employed in the Transport Department claim to have driven this jeep for the use of Begum Bakshi as well as affidavits by others who corroborate these statements. The Government has further filed Attendance Cards (Document 16) of these several drivers or cleaners who are shown as having been on duty during the period ranging from 1961-1964 and learned counsel urged that these records whose genuineness was not impeached, clearly corroborated the facts stated by the several deponents in their affidavits. Particular reliance was made on one of these attendance cards viz. of one Ghulam Mohammad for the month of April 1962 where he is shown as working on a "jeep". On this card are to be found

the letters "H. P. M" which was read as "Hon'ble Prime Minister."

34.11 The respondent has in the course of his reply denied the allegation that the jeep was being used by the members of his family and has gone into meticulous and elaborate details regarding the affidavits and documents filed by the Government with a view to establish that the affidavits of the drivers and those purporting to support them are inconsistent and even otherwise not worthy of credit.

34.12 I do not, however, intend examining this part of the Government case in the manner in which it has been presented by either side. As already explained, I do not propose to base my findings on facts stated in affidavits which are not admitted by the respondent, unless they are borne out by unimpeachable documentary evidence. No doubt these attendance cards have been produced, but by themselves they do not identify the vehicle on which the drivers were employed as the Land Rover in controversy and in the absence of such identification, Government cannot establish the fact which they seek to prove. Even the description of the vehicle driven by Ghulam Mohd. as a "jeep" does not substantially improve matters in the absence of adequate proof that there was in April 1962 no other vehicle with the Prime Minister which could be described as a "Jeep". The result therefore is that I must hold that Government have not succeeded in proving that the vehicle was being used by Begum Bakshi and the other members of the respondent's family between 1960 to 1963—the date of the registration.

34.13 The second way in which Government attempted to establish the use by Begum Bakshi of the vehicle during the period 1957 to 1963 was by reference to the ledger for the period February 1962 to April 1962 of the Commercial Oil Company which belonged to Abdul Rashid's wife and brother. The relevant page 103 (Document 17) is the account of Bakshi Bashir Ahmed showing his petrol purchases. In this account there are several entries which specifically state that petrol was supplied to Begum Sahiba, these being contrasted with the form of the entry where the supply was to Bakshi Bashir Ahmed the latter reading merely "to petrol". There are entries showing supply of petrol to Begum Sahiba on 1st March, 1962, 5th March, 1962, 9th March, 1962 and 10th March, 1962 and in these the slip book number is given as 14335 against each one of the debits—this number being confined to supplies in that name. Of course this might tend to probabalise the case that the Begum had a vehicle and that the same was being used, for which petrol was being supplied. Learned counsel for Government in this connection commented on the fact that neither Bakshi Bashir Ahmed, nor Begum Hajra had filed any affidavits explaining the nature of these petrol purchases. It was therefore strongly pressed on me that Document 17 clearly established the use of the Land Rover Jeep by Begum Bakshi at least in

March 1962. If I could base findings on a balance of probabilities, I would have yielded to this submission, but if the Government have to strictly prove each fact, I cannot hold that this had been done. In the absence of proof of the identity of the vehicle for which the price of petrol is debited in Document 17, I am unable to hold that this document by itself establishes the use by the Begum of this particular vehicle in March 1962. These entries are consistent with the lady having had a vehicle set apart by her son for her use

34.14 Before proceeding further, it would be necessary to refer to the case of the respondent. According to him, the Transport Commissioner was informed of the arrival of the Vehicle and that he did not know anything as to what happened to it and that if the Transport Commissioner did not have the Vehicle properly entered in the registers it was not his fault. He further states that the Vehicle was delivered to his P.A. at Jammu while he was away from the place and that on his being informed of this on his return he directed his P.A. to send the Vehicle immediately to Srinagar (Vide paragraph 5), and to inform the Transport Commissioner about the Vehicle which was to be allocated to the Dehat Sudhar Department (Vide paragraph 7), adding that the P. A. had informed him of having despatched the Vehicle to Srinagar. This, however, is not very consistent with what he says latter in paragraph 8 "Immediately after the general elections were over the respondent had directed his Security Officer to send the vehicle to the Transport Commissioner for being sent to the department concerned." Again, neither of these versions is consistent with the statement in the affidavit of Ramnath, the Security Officer referred to by the respondent who says - "a Land Rover bearing the Delhi number remained in the duty of the P. M. for about a month or so on tour in the valley in April-May 1957 " which would imply that the vehicle was not sent back "immediately" but remained with the Prime Minister. As if to corroborate the statement of the respondent as regards the return of the vehicle, Ram Nath adds that on the direction of the respondent he informed the Transport Commissioner to take charge of the vehicle, and that the Transport Commissioner on being informed sent someone who took away the vehicle and that he got confirmation of this over the telephone from the Transport Commissioner. There is nothing except his statement to vouch for these assertions, but this is not reconcilable with certain established facts.

34.15 The records of the Transport Commissioner do not indicate the receipt of this Land Rover in 1957 or at any later date and I should add that it is not suggested by or on behalf of the respondent that the same was entered in any register. Nor is it suggested as to why if the Transport Commissioner received the vehicle he did not enter the receipt in his books, or send on the vehicle to the Dehat Sudhar Department. Besides I should only add that the records of the Development Commissioner who was in charge of the

Dehat Sudhar Department do not contain any entry in token of the receipt of this vehicle, i. e. assuming that the Transport Commissioner on receiving the vehicle passed it on without any entry in his own books or records to the proper department to which the vehicle belonged, apart from the Development Commissioner not being aware of its whereabouts at least till August 1958 as seen from Documents 11 and 14 referred to earlier.

34.16 Besides there are on record statements in affidavits filed by Ghulam Ahmed and Syed Ali Safvi filed on behalf of the respondent which militate against the truth of the story regarding the vehicle having been delivered in April 1957 or thereabouts to the Transport Department. These deponents say that the Land Rover jeep, presumably they intend to identify it as the vehicle now in controversy, was being used not merely by the respondent during the election in 1957 but also by National Conference workers during the elections in 1962. How the vehicle got into their hands in 1962 from the Transport Commissioner is not explained, though one Abdul Rehman Bhat who has filed another affidavit in support of the respondent says that "on enquiry from them I was told that the same has been given to them by the then Transport Commissioner"—a statement which is not credible in itself and is unsupported by any other evidence. If the respondent is to be believed, he never saw or used the vehicle after May 1957, and his direction was that it be handed over to the Transport Commissioner to be delivered to the Development Department. If the vehicle was under the control of his party men in 1962, the story that it had been delivered to the Transport Commissioner in May 1957 must obviously be rejected as untrue. It is obvious that if it remained with the Transport Commissioner from 1957 to 1962, there must be some entry in some register of the Transport Department.

34.17 The respondent's story of how his wife became the owner of the vehicle is even more interesting and is briefly this. His wife Mst. Hajra Begum had been living away from him since 1961 and evidently she felt the need for a car and "he learned" that she had purchased the vehicle from the Transport Commissioner Mr. Raina for a sum of Rs 3,500/- out of which Rs. 2,000/- had been agreed to be adjusted against a debt he (Mr. Raina) owed to his maternal cousin Bakshi Abdul Rashid and the balance of Rs 1,500/- was paid in cash, and that the registration in her name took place after this purchase. This story as regards the purchase by his wife is purely hearsay for it starts by saying "this respondent has now learnt" etc. the source of the information being Abdul Rashid, who has no doubt filed an affidavit in this respect to be considered latter and has, therefore, to be discarded in limine.

34.18 I shall promise the discussion of this story of purchase by stating that Mr. Raina has filed an affidavit stating (1) that he was never indebted to Bakshi Abdul Rashid; (2) that he never sold the Government vehicle to Begum Bakshi; and (3) of

course that the price was not adjusted in the manner set out already. In view of this denial, the positive case of a lawful sale by the Government has to be established by the respondent. Begum Bakshi to whom notice in respect of the charge was issued under Rule 6 (1) (a) has filed no statement or affidavit in support of this story, nor has her son Bakshi Bashir Ahmed, with whom she is stated to have been living after 1961, chosen to file any affidavit in support. The matter rests wholly on the acceptance as true of the statement contained in the affidavit of Bakshi Abdul Rashid. My ruling that facts stated in affidavits which are denied by the other side would not be acted on unless supported by unimpeachable documents, applies here also. The ruling apart, even if I should act on statements by the defence which have strong probability in their favour, I am wholly unable to accept as true the facts stated in this affidavit. He does not produce his accounts to prove the indebtedness of Mr. Raina to him, nor has he any receipt or record as regards the payment of Rs. 1,500/- in cash. There is no explanation even attempted for the non-existence of any record of the sale or purchase or for its non-production if any existed. Abdul Rashid was a member of Parliament, besides having been the Secretary of the ruling party in the State, and must, therefore, be presumed to be acquainted with the manner in which public business is conducted. It is not possible to believe that he obtained no record or took no voucher or receipt to evidence the sale of a vehicle by the Government, if it took place. The respondent in his reply required that the Income-Tax returns and assessments of Mr. S. K. Raina should be summoned stating that these would establish his indebtedness to Abdul Rashid and the manner in which the same was discharged. These returns were accordingly summoned, and as neither the respondent nor Abdul Rashid appeared at the stage of the final hearing I examined them myself carefully to see whether they supported Abdul Rashid's story. They do not, I do not think it necessary to set out the details of these returns, because this is only negative.

34 19 Besides, there are formalities under the law for transfer of motor vehicles which provide for intimation to the Registering Authority by a document signed by the buyer and the seller. When these are omitted — as it is stated they were in this case — an explanation for it must be forthcoming, but none is even attempted. It is in the light of this circumstance, that the advertisement in the Gazette (Document 20) in June 1963 regarding the loss of the "relevant documents" attains significance. The document of sale by the Transport Commissioner in favour of the Begum would be a "relevant document" and it was not "lost" because none ever existed, I say this because even Abdul Rashid does not say that a sale note was passed. Admittedly there was the Delhi number plate attached to the jeep, though this was a temporary one, and had outlived its legal life. But still that would have

enabled anyone to trace the original purchase and the history of the vehicle. The assertion in the advertisement of the loss of the documents was deliberately untrue.

34.20 There is another circumstance which might be mentioned in this connection as relating to the officer from whom the vehicle is said to have been purchased. The respondent knew that the vehicle had been purchased out of the funds allotted to the Development Department and in fact, if he is to be believed, he directed in May 1957 that the Transport Department should be informed of the arrival of the vehicle which was to be allocated to the Dehat Sudhar Department. If the vehicle was the property of the Development Department it could have been dealt with only by the Development Commissioner and not the Transport Commissioner. But the respondent speaks in his reply as if he was satisfied with the story of a lawful sale by the Transport Commissioner which is another reason why the story of the sale cannot be accepted.

34.21 These are circumstances by no means unimportant which militate against the acceptance of this story of a sale of the vehicle by the Transport Commissioner, but there are two more which might be considered even more crucial. The first is that the Transport Commissioner was not competent to effect a sale, even of a second-hand vehicle, and this could be effected only by the respondent. In fact a Cabinet resolution was passed to effect sales of vehicles and their prices were fixed by the respondent, as would be seen from the documents set out and explained in connection with Allegations 26 and 37 (vide paragraph 13 and 29 supra). Secondly, if the Transport Commissioner effected the sale, one cannot understand the Transport Department advertising the "loss" of documents evidencing the sale, for the sale is supposed to have taken place by them, and the sale papers must be available in their office if nowhere else. This has to be taken in conjunction with the admitted fact that at that point of time, the Transport Commissioner was friendly to the respondent and had no motive to make a false statement regarding "loss" of Documents. In these circumstances, I have no hesitation in rejecting this story of the purchase of the vehicle from the Transport Department, as untrue, and thought of merely in an attempt to get over a rather nasty and awkward situation.

34.22 The position that emerges in the light of the above analysis of the evidence may now be summed up. The Land Rover jeep was purchased in March-April 1957 for Rs 17,609.50 for the Community Development Department out of State funds, to the knowledge of the respondent. The vehicle was used by him in April-May 1957 according to him "in view of the law and order situation" at the time of the General Elections. There is no acceptable evidence that after this date it ever left his possession, since it rests only on statements in the affidavits of himself and those supporting him which

for reasons already stated I discard. In this connection the silence of inaction of the Development Commissioner who was informed of the purchase in January 1958 and who after making some efforts to ascertain its whereabouts, in August 1958 took no effective steps in that direction till 1964 is not without significance. This could only be explained on the basis that the vehicle was known to be with the respondent, to whom according to the information furnished to that officer it was delivered by the Central Motors in March 1957. I feel bound to add that if the Development Commissioner, had done his duty by pursuing the enquiry when he got no reply to his letter to Mr. Avasthi, the matter could have been set right, and it was this lapse on his part that has been responsible for the situation that emerged finally.

34.23 I have held that the affidavits and documentary evidence adduced by the Government to prove the use of the vehicle by the respondent or the members of his family do not suffice for the purpose. Nevertheless it would be for the respondent, who is proved to have been in possession in 1957 to establish what he did with it and this he has not even attempted seriously to accomplish, and the story of the return of the jeep to the Transport Commissioner besides being riddled with inconsistencies is found to be untrue. It is clear that if the story of the purchase from the Transport Department were rejected, as I have done, the property in the vehicle would have been with the Government on the date of the Registration and even thereafter and it is common ground that the respondent's wife was using the jeep as her own after May-June 1963 treating it as her property. I, therefore, find that the charge as laid is made out. As a result of this abuse of power the respondent has benefited himself and his wife to the extent of Rs 17,609.50 being the value of this Government vehicle.

35.1 What remains for consideration is Allegation 1 which though it is in the form of a charge, really contemplates merely a summary of the results of the examination of the charges contained in Allegations 2 to 38. Of these 37 charges, two allegations—8 and 28—were rejected by me on the ground that the evidence placed before me in their support did not furnish even a *prima facie* case of misconduct. The charge in Allegation 13 has been dropped by the Government itself for the reason that they would not be able to make it good. In the foregoing pages I have examined the rest of the 34 charges, though for reasons which I have already stated I have dealt with them in nearly a chronological order, departing from that found in the notification which was merely *ad hoc* and not based on any principle. In every case where I have found the charge to be established, I have attempted to evaluate the financial advantage gained by the respondent or by the members of his family by the abuse of the official position of the respondent. In addition in respect of some of the charges I have found

that though certain of the members of the family did obtain improper and undue financial gains, the same had not been established as having been due to any abuse of power or official position on the part of the respondent.

35.2 This would be convenient stage at which to set out the terms of Allegation 1.

"Bakshi Ghulam Mohammad and his relatives as mentioned in Part A of the First Schedule who were persons of modest means in 1947, had by 1963 acquired vast assets and pecuniary resources valued at about Rs. one and half crores and this process of acquisition was facilitated by the abuse by Bakshi Ghulam Mohammad of his official positions or by the exploitation by his family and other relatives, with his consent, knowledge or connivance of his official position as Deputy Prime Minister and later as Prime Minister of the State of Jammu & Kashmir".

It would be seen from its text that it assumes that the affluence and wealth of the members of the family of the respondent specified in part 'A' of Schedule I and the total assets held by them on the date when the respondent relinquished the office of the Prime Minister of the State as compared with that these were in October, 1947 was due directly or indirectly to the abuse of his official position by the respondent. The narration, however, of the growth of the fortunes of the family which I have attempted in the course of my examination of the several allegations and the findings that I have recorded in regard to these charges would amply prove that this would not be quite correct.

35.3 I think I could not do better than to summarise in very brief outline the progress of the wealth of the several members or rather of the totality of their assets at certain crucial stages as regards which alone we have evidence.

35.4 In my answer to the first part of question (1) I have found on the evidence placed before me in regard to which though no reply was filed, I consider that the material are both satisfactory and sufficient, that at the time when the respondent became the Deputy Prime Minister of the State the total assets of the family which consisted of merely of a few residential houses, did not exceed Rs. 10,000 in value. All the members of the family put together were not deriving from the business which they were carrying on and from the employment which some were able to secure, anything more than Rs. 850/- per mensem.

35.5 The period from then on to October 1963 falls into three distinct periods. The first is from October 1947 or thereabouts to 1956, by which date the assets of the members

might be computed at over Rs. 25 lakhs. The charges contained in Allegations 18, 4, 7 and 17 fall within this period. Having examined the evidence adduced by the Government on these charges I have found that none of them had been made out. It was during this period that the family concern Feroze and Co, which was a partnership composed wholly by the leading groups of the family came into existence, and by taking contracts for supplies to the military authorities, Abdul Majid who was virtually in management of this business, was able to amass a phenomenal fortune, both for himself and in a lesser degree for the other members of the family. The family got into this military contract business in 1948 soon after the respondent assumed office as the Deputy Prime Minister of the State. It is possible, and I would say very probable, that Abdul Majid who was incharge of Feroze & Co. and as well as the other members of the family who were helping him in the business of this firm derived advantage out of the official position of the respondent in the sense that the halo of the offices that he held, gave them a prestige and influence when dealing with the military authorities on the one hand and the suppliers to them on the other. These are intangible advantage attendant upon the close relationship to the holder of a high office, but regarding which no blame can attach as being any improper method of obtaining or conducting business. It is also possible as pointed out already in paragraph 3.10 page 182/ante that Abdul Majid exploited his relationship to the respondent by failing to pay his own suppliers for the goods supplied to him as seen from some of the affidavits filed in this Allegation, as also some from members of the public filed in pursuance of the public notice under Rule 6 (1) (b), but as there is nothing to indicate that the respondent had any thing to do with this exploitation and as besides they are not part of the charge, I have not taken any notice of these. My only object in mentioning this here is to point out that these might offer in some measure an explanation for the sum of over Rs. 21 lakhs voluntarily disclosed in 1956.

35.6 The result is that the total extent of assets held by the members of the family in the shape of cash, moveable or immoveable properties held by them at the beginning of 1957 cannot be attributed to abuse of power or of the official position of the respondent. I have taken the end of the year 1956 as the termination of this period because it was round about this period that the family concern of Feroze & Co. commenced to diversify its activities and to spread into various fields, particularly in the trade in automobiles and automobile accessories, and taking forest contracts, to mention only the most prominent. The total of the assets acquired by the several members of the family and the cash gathered by them up to 1956 was therefore, by their own efforts. These assets including cash, I have estimated to have been over Rs. 25 lakhs at about the beginning of 1957 so that it is from that point, or rather with that as the financial base, that

one must start in judging of the pecuniary advantages derived by the several members of the family by reason of any abuse of the official position of the respondent and not really from October 1947. I should add that this figure of Rs 25 lakhs is based on the voluntary disclosures of their unaccounted assets and monies made in February 1956 by the several members of the family having been full and complete.

35.7 The next period starts from 1957 roughly coinciding with the period immediately following the return of the respondent's son Bashir Ahmed from abroad after undergoing training in automobile engineering. This period extends from then on to the end of 1960 when owing to differences and disputes between the several members of the family who up to then were the constituents of the family concern of Foroze & Co. made up their minds to dissolve the firm and set up independent businesses each on their own account. It is during this period that I find there is proof of abuse of power and of official position which was exerted mainly in order to assist Bashir Ahmed in his automobile business. Allegations 16 and 22 belong to this period and by reason of the facts which I have discussed in connection with the charge in these two Allegations, the firm of Fairdeal Motors, Srinagar got the agency of TELCO products including T.M.B. vehicles for the Province of Kashmir and with the orders placed by the Government for the conventional and heavy duty trucks and a very large advance of Rs. 33 lakhs paid to them the business was placed on a very sound financial footing. The firm of Fairdeal Motors commenced business in the latter part of October 1957. From then on up to the end of 1960 it had even if one proceeded on the footing that the firm's income was properly computed in the Income-Tax assessments earned a net profit of Rs. 5,14,851 in the course of three years and two months. This would give some idea of the profitability of the concern. As the agency is still continuing, the total financial advantage accruing from the abuse of power has been computed by me at over Rs. 17 lakhs (vide paragraph 5.64 page 276/ante.

35.8 There are two other charges of abuse of power levelled against the respondent which relate to this period and which are covered by Allegations 30 and 33, but after examining the evidence I have recorded my conclusion that the Government had not been able to establish the charge against the respondent. Though in the case of Allegation 30 I have found that Ghulam Nabi, the respondent's brother, obtained an undue and improper financial gain of Rs. 4 lakhs the same has been held not proved to be attributable to any positive act of abuse of power on the part of the respondent.

35.9 Taking stock of the position towards the end of 1960 what emerges is that having started with properties and cash of Rs. 25 lakhs in 1956-1957, the only substantial gain which is proved to have been made during this period through

abuse of power on the part of the respondent is the obtaining of the agency of TELCO vehicles ect. for Fairdeal Motors, Srinagar, the advance paid to the firm and the orders placed by the Government with it for the vehicles. If we had before us the statements of accounts which were prepared at the time of the break-up of the family at the end of December, 1960, we could have had an idea as to the progress made in those three or four years, but unfortunately they have not been forthcoming though I am quite sure they are available but have been suppressed. The excuse given that they have been lost by fire I reject as untrue.

35.10 It is the next period from about the end of 1960 to almost the date on which the respondent relinquished his office that we have crowded in a short space of time a very large number of charges several of which the Government have been able to establish. The Primary beneficiaries who obtained improper and undue advantages by reason of the abuse of power which I have found are his son Bashir Ahmad, his brothers Abdul Majid and Ghulam Nabi and his cousin Abdul Rashid-the last of whom besides being a close relation was also the Secretary of the ruling National Conference party. Immediately after Bashir Ahmad became the sole proprietor of Fairdeal Motors, Srinagar on 1st January, 1961 under the settlement arrived at between the members of the family in December 1960, the respondent used his official position to assist the firm by providing it with cash out of Government monies. These are the subject-matters of Allegations 23 and 24. Besides when Bashir Ahmed desired to expand his activities and enter the oil transport business at the end of 1962 the Government came to his assistance by providing him with tankers which were then not available owing to restrictions imposed by the Government of India following the Emergency, and enabled him to obtain the permits necessary to run these vehicles, so that he stood at an advantage compared with others who were likely to compete with him for obtaining this contract. Bashir Ahmad obtained a profit of over Rs. 2½ lakhs in the course of about 18 months by reason of his possession of these tankers and the contract that he obtained with the Indian Oil Co. These are the subject-matter of Allegations 26 and 27.

35.11 Bashir Ahmed had constructed a house at Chashmashahi and the electrical connection for this house was provided for it for Rs. 9,000/- at public cost at the instance of the respondent and this is the subject-matter of Allegation 32.

35.12 The favours to his son Bashir Ahmed at this period include three more items, the first being one of the 4 items in Allegation 14 and the second that which figures as item (iii) of Allegation 15(a). Both these concern a house at Noonawan in Pahalgam popularly known as the Prime Minister's House which was admittedly being used by the respondent

for his residence during summer. This house was constructed on property purchased in the name of Bashir Ahmed and his sister. The charge in Allegation 14 which I have held proved was that out of a sum of Rs. 16,000/- due to Abdul Ghani Bhat the contractor who constructed or reconstructed this house, only Rs 7,000/- was paid and the balance of Rs. 9,000/- was not paid. Abdul Ghani Bhat being a Government contractor who obtained several contracts. The other charge contained in item (iii) of Allegation 15(a) is that 1500 flooring tiles which had been supplied for the flooring of the Tourist Centre at Pahalgam were improperly diverted for use in this house, has been proved to the hilt. Notwithstanding the respondent's denial I have found on circumstantial evidence his knowledge regarding the use of these tiles in the house. He has thus improperly benefited his son at public expenses on this item to the extent of Rs. 1676.12. Lastly I have found that the charge contained in Allegation 5 has been made out, and this relates to the advantages gained by Bashir Ahmed by reason of an encroachment of forest land which was managed to be sold as his private property by obtaining fraudulent certificates as regards title.

35.13 The same firm which diverted the 1500 tiles paid for by the Government for being used in the "Prime Minister's House" at Pahalgam—The Northern India Tile Corporation—also supplied 4600 flooring tiles free of cost for being laid in the Fairdeal Motors building at Srinagar belonging to Bashir Ahmed. In the case of this supply, I had the refreshingly frank explanation from the firm for this free supply of tiles to Bashir Ahmed and the lying of them at the suppliers' cost, that it was not any "undue favour" but "due favour" shown to further their business interests, since they were executing large Engineering construction contracts for the State Government and they desired to be on the right side of the respondent. I have, however, found that the respondent had not been proved to have had knowledge of this free supply and so have held the charge not proved though Bashir Ahmed obtained an undue advantage. A similar finding viz. that though admittedly undue financial advantage had been gained by Bashir Ahmed the same had not been due to any abuse of power on the part of the respondent, has been recorded by me in regard to the charge in Allegation 25.

35.14 Not merely this, Yasmin Bakshi, wife of Bashir Ahmed desired to enter the hoteliers business and this was made possible by the respondent using his official position by granting her a lease of Nedous Hotel premises for a period of 20 years (vide Allegation 20). The profit and loss accounts of Nedous & Sons and their balance-sheet though summoned were not produced and similarly the balance-sheets of Nedous Hotel after the new management took over were also not made available. I have, however, estimated the financial advantage accruing to her from this abuse of power at Rs. 6,00,000 (vide paragraph 20.32).

35.15 Coming next to Abdul Majid, he had acquired two out of three cinema theatres in Srinagar viz. Regal and Amrish by purchase in 1951 and he was deriving very good profits from this business, particularly since he had hardly any competitors in the field. It was the case of the Government that the competition was not there, not because nobody else came forward to run theatres, but because the respondent saw to it that no other theatres were licensed. Government referred to two particular cases of Regina and Jai Hind theatres to whom licences were not granted for the reason that the respondent stood in the way I have, however, found that there was no basis at all for the charge against the respondent in respect of the Regina, the licence for which was refused by the Council of Ministers at a time when Sheikh Mohd. Abdullah was the Prime Minister of the State. In regard to the Jai Hind Talkies also I have found that though the Government had not been able to establish any active interference by the respondent in the proceedings before the District Magistrate before whom an application for the grant of a licence was pending, still that he eliminated all possibility of competition by acquiring the Jai Hind theatre building for the Transport Department when the same was not needed and that this acquisition was an instance of abuse of official position and with the intention of benefiting Abdul Majid. Notwithstanding this finding of mine, it has not been possible to specify the quantum of financial advantage derived by Abdul Majid by this purchase. Indeed it would not be possible to compute the advantage by reason of want of competition because unless we have at the same point of time both competition and want of competition, it would not be possible to determine the difference between the two and arrive at the figure of the benefit from want of competition. But this, however, does not mean that no advantage was gained, only it cannot be computed with any exactness.

35.16 Besides I have also found that in this period Abdul Majid was granted the lease of a site for a petrol pump in Bonamsar, a very prominent locality in Srinagar just opposite to the Amar Singh Club, in the name of his minor son Anwer Aftab. This is the subject of the charge in Allegation 11. In regard to this charge, I have found that though Anwar Aftab, the lessee had by reason of the low premium fixed made an undue financial gain of Rs. 6,000/-, still the same had not been satisfactorily proved to have been due to the abuse of power on the part of the respondent.

35.17 The next to be considered is Ghulam Nabi who specialised in the forest contract business. Three charges have been levelled against the respondent in regard to the benefits conferred upon Ghulam Nabi in his forest business-which are contained in Allegations 29, 30 and 31. I have already referred to Allegation 30 and the finding I had recorded in relation to it, viz. that though Ghulam Nabi did obtain

an undue benefit of Rs. 4 lakhs, there was not sufficient evidence to establish an abuse of official position on the part of the respondent. My finding in the case of Allegation 31 is also similar and I have given reasons in dealing with the charges covered by this Allegation that in regard to the two lease of 9-Rajwar and 53 and 54 South Lolab with which that Allegation is concerned, the lessees had unduly and improperly benefited to the extent of Rs. 7,02,000 and Rs. 6,43,000, these being the entirety of the amounts of remission granted to them out of the royalty payable by them, on the ground that there had been abnormal rot in the compartment leased. In the course of my examination of the several documents I have found that several of the statements in the files had been manipulated and interpolated by subordinate forest officials by the insertion of false figures in order to find and inflate a case of abnormal rot which did not exist. The subordinate forest officials appear to have vied with one another to assist Ghulam Nabi to obtain the maximum rebate and therefore a higher profit in the leases I have examined. But as there was no proof based on proper materials to establish that this had been due to any direction or interference of the respondent, and there was nothing more than suspicion as regards abuse of power, I have recorded a finding rejecting the charge. In this connection I should not fail to mention that when Ghulam Nabi was confronted with the lists which he had himself submitted as to the condition of the logs converted out of the trees felled between the years 1959 and 1962 in the South Lolab lease, which proved that the rot in the compartment far from being abnormally high, was much less than normal exhibited a sense of realism and humour coupled with an amount of cynicism, when he said that he was not responsible if the forest officials who computed the rot percentage did not take his documents into account. In saying this I am having in mind his comment on Document 51 in Allegation 31 and the statement annexed to the affidavit of Mr Naqash in which the figures derived from the lessee's own record are summarised and tabulated with which I have dealt in detail in considering this charge.

35.18. The case of the lease of 27 Budnambal which is subject of the charge contained in Allegation 29 however stands on a different footing. There we have in the files, the successive stages which the inflation of the rot percentage took from 40% to 58% in the manuscript and typed notes of Mr. Firdous, the Chief Conservator of Forests even the 40% being a designedly inflated one. The relief to be afforded snowballed from Rs. 4,22,000 to Rs. 5,68,000 by corrections in manuscript made from time to time. I could find no explanation for this conduct on the part of an officer of the status of a Chief Conservator unless there had been an intervention by the respondent and instructions by him to so alter the note. Though in the case of this lease also the sum of over Rs. 5 lakhs of remission

allowed for abnormal rot was unjustified and was really in the nature of a gift of public money, on a critical examination of the evidence I have found that out of this only Rs. 2½ lakhs was attributable to the abuse of power on the part of the respondent because of the insufficiency of the evidence to prove his interference at stages anterior to the report of Mr. Firdous. I have recorded a finding regarding improper gain regarding flood loss relief, though no abuse of power had been established.

35.19. The next person to benefit by abuse of power during this period was Abdul Rashid. It had been suggested that the respondent undertook an obligation, moral or otherwise, to compensate Abdul Rashid for the very meagre benefit that he derived and the paltry sums that he got on the dissolution of the family concern of Feroze & Co. at the end of 1960. Whether this was actually so or not, the events which followed immediately after the break up of the family, seem to probablise the existence of such an understanding. I am however not to be understood as saying that I have based any conclusion on the basis that this understanding had been proved.

35.20 The benefits consisted of three items which followed one another from the end of 1960 to the middle of 1961, i.e. within a period of less than six months. These are the charges covered by Allegations 9, 10 and 19. Allegations 9 and 10 relate to the grant of leases of Nazul land for setting up petrol pumps in the Hotel Road at Srinagar and B. C. Road at Jammu respectively in the name of his minor son Ghulam Jeelani. The charge in Allegation 19 is as regards obtaining a cartage contract for Rashid's wife and brother Ghulam Hussain. Though the grant of the leases for both the petrol pumps covered by Allegations 9 and 10 are riddled with improprieties and irregularities, and in both improper benefits had been obtained I have found that the charge of abuse of power had been made out only in the case of the petrol pump at Hotel Road, Srinagar covered by Allegation 9 and not in respect of the other pump site. I have estimated the undue financial advantage gained by Abdul Rashid's minor son Ghulam Jeelani by obtaining the lease of the B. C. Road site covered by Allegation 10 on a nominal premium at Rs. 24,750/-.

35.21 In regard to Allegation 9, however, I would draw attention to a remark that I have made in discussing the charge that if ever there was a case in which circumstantial evidence afforded by documents could completely establish a case of abuse of power, it was the case with respect to that charge. The benefit from the improper grant of this lease I computed at Rs. 38,942.00, made up of two items. Firstly, no premium was charged though it had to be under the rules. If a proper premium were charged, it would have been about Rs. 32,000. Secondly the Government had incurred an expense of Rs. 6,942.00 in removing an electric sub-station which was on the leased site only for the purpose of leasing it for a petrol pump site. This

therefore would be another advantage that had accrued to the lessee.

35.22 The benefit here referred to in Allegations 9 and 10 are, however, for outshone by what Abdul Rashid derived from obtaining the carriage contract which is the subject of Allegation 19. For lending their name as carriage contractors to the ESSO, the real work being done by Messrs Aishi Ram Batra, the previous contractors who consented to work as sub contractors of the Commercial Oil Co. this being the name under which this business of Abdul Rashid was run this firm obtained the following sums:—

For the year 1961-62	..	Rs. 55,372.90
For the year 1962-63	..	Rs. 69,526.80
For the year 1963-64	..	Rs. 75,880.90
From 13-4-64 to 10-9-1964	..	Rs. 33,830.14
Total	..	Rs. 2,34,660.74

These amounts were received by the Commercial Oil Co. of which Abdul Rashid's wife and his brother were partners though to repeat what I said earlier—The Commercial Oil Co. brought to this new venture of oil cartage contractors no past experience, no capital it owned no tankers or other vehicles, had no facility for repairs, no staff and no organisation, in fact nothing except the close relationship of its partners to the respondent. They were able to displace the firm of Aishi Ram Batra who had been the carriage contractors of ESSO for over a decade earlier, who had the tankers and the equipment which was ultimately utilised for implementing this contract, though nominally as sub-contractors of the Commercial Oil Co. By merely lending their name, they obtained these enormous amounts and all because the permits for transport vehicles were kept under the strict control of the respondent.

35.23 We next have the charge relating to the allotment of house sites to the members of the respondent's family specified in part 'A' of Schedule I which took place mostly between 1961 and 1963. A subsidised scheme devised for the allotment of house sites for the Low Income and possibly Middle Income Groups was deliberately subverted to provide at cheap rates house sites for the rich and among

the rich the most favoured ones being the members of the respondent's family. The defence of the respondent on this part of the case, I am sorry to say, is deliberately false. In the first place he was personally aware of the great demand for house sites by the very people for whom the scheme was intended for he presided at various meetings of the Housing Board at which this problem of paucity of sites to meet the demand for them was discussed and decisions taken. Yet he chose to state in his defence that the plots went abegging and, therefore, he had to persuade his friends and relations to obtain allotments and thus set an example to others to follow. Besides the respondent was also aware that there had once been an auction of over 30 plots in Gandhinagar at Jammu and about the price realised at that auction, for he refers to it in express terms in his reply. How these high bids could be reconciled with disinclination on the part of applicants to obtain allotments at subsidised prices he has not cared to bestow any thought on. Again, in answer to a statement by the Government that he personally took a hand in and directed the several allotments which were improper, irregular and contrary to the rules relating to allotments, he disclaimed all responsibility and threw it on the Minister for Housing which was wholly unfair to his colleagues because the files clearly show that the respondent reserved powers of allotment to himself in certain defined categories, and exercised this power as Prime Minister and that in these cases it was not the Minister that made the allotments, but the respondent himself, and this defence he took notwithstanding that before he filed his reply he had before him the documents which clearly showed that the allotments were being made on his orders. These are the reasons which have prompted me to make the observation regarding the departure from the truth not being inadvertent but deliberate. In dealing with the charge in respect of this allegation I have out of fairness to the respondent traced the history of the scheme and the allotments under it from stage to stage pointing out at each stage from the notings in the files the tightness of the position as regards the plots, how efforts were being made from time to time to acquire more land for the purpose of allotment, and the scramble among the

and without any abuse of power on the part of the respondent. Allegation 37 is omitted here because it concerns a member of the family in Part B of Schedule I.

35.28. In addition, I have found that in Allegation 29 the undue financial advantage gained by Ghulam Nabi was more than had been proved to have been established as due to abuse of power on the part of the respondent.

35.29. Starting with the fairly comfortable financial base of Rs. 25 lakhs in 1957, I am by no means surprised at the progress made in seven years. With the sum of over Rs. 50 lakhs of unfair and improper advantage gained had to be taken the experience gained and contacts established between 1948-1956 which must have contributed to their standing in the business world. Besides in the fiercely competitive business world, particularly in the automobile and oil transport, the advantage afforded by nearness to the centres of authority or the levers of power provides a sufficient edge over the rivals, as to result in a steady upward march towards greater affluence even without any element of undue advantages or abuse of power. In making this observation, I have in mind the case with which the Commercial Oil Co, secured the dealership of ESSO products in regard to which I have rejected the charge of abuse of power of the respondent made in the first part of Allegation 19. These are, what one might term, natural advantages which those connected by ties of relationship or friendship with those in high offices enjoy, and which for their elimination would require more than normal exacting standards of public morality which might involve even an element of discrimination against those groups—a state of things which would be unattainable in any society.

FINANCIAL ADVANTAGES BY BAKSHI GHULAM MOHAMMAD AND HIS RELATIVES IN PART 'A' OF SCHEDULE I.

[710 (i)]

Sl. No.	Allegation No.	Person benefited	Amount of financial advantage due to abuse of official position of the respondent.	Remarks
1	2	3	4	5
1.	2	Bashir Ahmed	Nil	Though Bakshi Bashir Ahmad and Baksbi Abdul Majid were able to purchase the land they wanted and encroached upon adjoining lands, the same is not attributable to the abuse of power on the part of the respondent.
2.	3	Abdul Majid & Maqsooda Begum	Nil	
3.	4		Nil	
4.	5	Bashir Ahmed	Rs. 9,500.00	Charge of purchase by coercion and under-payment not established.
5.	6		Nil	Charge established in part.
6.	7		Nil	Charge of deliberate encroachment not established
7.	9	Abdul Rashid (Ghulam Jeelani)	Rs. 38,942.00	Charge of purchase at unfairly low price not established.
8.	10	Abdul Rashid (Ghulam Jeelani)	Nil	Rs. 32,000 the premium on 6 kanals 8 marlas of land @ Rs. 5,000 per kanal and Rs. 6,942 the cost of dismantling and rebuilding the electric sub-station charge proved. Though Ghulam Jeelani benefited to the tune of Rs. 24,750, the same was not due to the abuse of official position of the respondent.

S. No.	Allegation No.	Person benefited	Amount of financial advantage due to abuse of official position of the respondent.	Remarks
1	2	3	4	5
9.	11	Abdul Majid (Anwar Aftab)	Nil	Though Anwar Aftab benefited to the tune of Rs. 6,000, the same was not due to the abuse of official position of the respondent.
10.	12	Bakshi Bashir Ahmed Bakshi Abdul Rashid (including Ghulam Jeelani & Zamrooda) Zamrooda Begum & her husband Ghulam Nabi Ghulam Hussain (cousin) Abdul Majid	Rs. 19,000.00 Rs. 56,743.93 Rs. 16,600.00 Rs. 19,000.00 Rs. 12,117.00 Rs. 12,000.00	Charge proved. Allegation includes allotments in favour of relatives in Part 'B' of Schedule I. (for details see Tabular statement in paragraph 30.102, page 668 to 670)
		Total :	Rs. 1,35,460.93	
11.	14(a)	Bashir Ahmed & Shama Mir	Rs. 9,000.00	This is the underpayment to the contractor in regard to the Noonawan House, Pahalgam. The rest of the charge not established.
12.	15(a)	Bashir Ahmed	Rs. 1,676.12	Though Bashir Ahmed benefited to the extent of Rs. 10,365.26 being the value of Nitco tiles and laying charges, only a sum of Rs. 1,676.12 is attributable to the abuse of power on the part of the respondent.

13.	16	Bashir Ahmed	Rs. 17,14,751.00	Charge proved.
14.	17		Nil	Charge not established.
15.	18		Nil	Charge not established.
16.	19(b)	Raja Begum w/o Abdul Rashid and Ghulam Ahmed	Rs. 2,34,660.00	Charge proved.
17.	20	Yasmin Bakshi		
18.	21	Abdul Majid	Rs. 6,00,000.00	Charge proved. Though Abdul Majid benefited by the elimination of competition and this is attributable to the abuse of power on the part of the respondent, the financial advantage obtained cannot be valued.
19.	22		Rs. 28,000.00	Charges established. Though Bashir Ahmed benefited to the extent of Rs. 28,000, Rs. 7,393 and Rs. 3,000 respectively in regard to these three allegations, they are not separately considered as the same should be deemed to be included in the profits of Fairdeal Motors, computed under Allegation 16 supra.
20.	23	Bashir Ahmed	Rs. 7,393.00	
21.	24		Rs. 3,000.00	
22.	25	Bashir Ahmed	Nil	Though Bashir Ahmed was able to secure an improper and illegitimate benefit of Rs. 31,400, this is not attributable to the abuse of the official position of the respondent. Charge proved. The pecuniary advantage by the abuse of the official position of the respondent is being assessed in Allegation 27.
23.	26	Bashir Ahmed		
24.	27	Bashir Ahmed	Rs. 2,67,951.76	Charge proved.

S. Allegation No. No.	Person benefited	Amount of financial advantage due to abuse of official position of the respondent.	R e m a r k s				
			1	2	3	4	5
25.	Ghulam Nabi	Rs. 2,50,000.00	Though Ghulam Nabi obtained an undue financial advantage of Rs. 5,90,000 (Rs. 5,00,000 on account of remission for abnormal rot and Rs. 90,000 on account of flood loss), only Rs. 2,50,000 is attributable to the abuse of power on the part of the respondent.				
26.	Ghulam Nabi		Though Ghulam Nabi had obtained undue financial advantage to the extent of Rs. 4 lakhs and this has meant a loss to the Government, this is not attributable to the abuse of the official position of the respondent.				
27.	Ghulam Nabi		The lessee Ghulam Nabi obtained an unjust financial advantage to the extent of Rs. 7,02,000 and Rs. 64,000 on account of abnormal rot, but this is not attributable to the abuse of the official position of the respondent.				
28.	Bakshi Ghulam Mohd. & Bakshi Bashir Ahmed	Rs. 4,561.00 Rs. 9,000.00	Charge proved.				
		<u>Rs. 13,561.00</u>					

29.	33			
30.	34	Bekshi Ghulam Mohd. Rs. 17,609.50	Nil	Charge not established.
31.	35			Charge established.
32.	36		Nil	Charge not established.
33.	38		Nil	Charge not established.

CONCLUSION

36.1. I have now reached the end of a long and arduous journey which has by no means been rendered easier, but rather harder, by the absence of Mr. Bakshi Ghulam Mohammad at the later stages of the inquiry. Before closing I propose to permit myself a few observations both on the inquiry as well as what has brought out.

36.2. I would start by commenting on the investigation which preceded the setting up the Commission, and which continued right through, even after I started my work until the entire material was gathered and placed before me. In my opinion the investigation has been both thorough as well as fair though I must confess to a feeling that if the Government had confined themselves to the more serious and, therefore, a fewer number of charges the investigation would have gained in depth. I say this because information had to be gathered from the files, analysed and placed before me in answer to my questions during the course of the final hearing. The fairness of the inquiry, has however, been questioned by the respondent, in the several statements that he has filed in answer to the charges as also in some of the petitions which he has filed. In these he has made serious charges of improper inducements being offered to and intimidation and coercion exercised by the investigating officers against those who had filed affidavits in support of the Government case. In particular in a petition which he filed which was numbered as Miscellaneous Petition 13/1965, specific charges were made in relation to named individuals. But after the Government filed their reply to it, denying the truth of the allegations and when the petition came up for orders, Mr. Sharma appearing for the respondent stated that he was not pressing the petition and that I need pass no orders on it. I can, therefore, proceed only on the basis that the respondent was not serious about this charge.

36.3. There is, however, one aspect of that evidence which I cannot pass over without comment.

36.4. The most saddening and depressing of the materials placed before me were the affidavits of the officials who confessed to have knowingly done improper acts extending even to tampering with official records to the prejudice of the State and State property and monies in carrying out the desires or orders of the respondent to benefit himself or his relations. The respondent who has denied every charge made against him had naturally something very sharp and scathing to say against these officers— some of them heads of their Departments like the Chief Engineer, the Chief Conservator of Forests, the Transport Commissioner— not to speak of the lesser ones. His case against them was put in two ways ; first that these officers who still continued in service and some even promoted to higher jobs, had been coerced or

tempted to make false statements out of fear of losing their jobs face worse consequences. In the alternative he said that as on their own confession they were guilty of improprieties, their statements were like those of accomplices entitled to little credence.

36.5. The first alternative has not been brought home, and the one petition, Miscellaneous Petition 13/1965 in which these charges were specifically made was not as pointed out earlier, pressed after Government had denied the truth of the assertions. But I must say that I have been impressed by the second of the alternatives put forward. If on their admission these officers had knowingly been parties to improprieties to assist the respondent when he was the Chief executive, it cannot be assumed that they would not stoop to improprieties in the shape of filing false affidavits to assist the succeeding administration that is conducting the prosecution in this inquiry. Though, therefore, the respondent might not be justified in saying that the officers were coerced or induced to speak against him, he is on firmer ground when he accused the officers of lacking in character, and of being on their own admission willing tools of the Government in power. Whether what they stated in their affidavits was true or false is a very different matter, but these deponents are certainly very unreliable persons. This was one of the reasons why I have discarded wholly the statements made by them in the affidavits filed by them when the truth of their assertions could not be ascertained by cross-examination, and have confined myself to the documents and to the inferences to be drawn from them in the light of the facts and circumstances.

36.6. It is essential for an efficient and clean administration that the permanent officials should give of their honest best to the work entrusted to them, not only efficient and intelligent service, but should with frankness and without hesitation place before their political heads, their appraisal of each problem after a thorough and objective examination. It might be that this involves some amount of delay, but I consider that the elimination of all delay which an examination at Departmental and Secretarial level necessarily involves is not necessarily conducive to efficient administration. I am tempted to make this observation, because, the impression I get of the respondent is that he was possessed of unbounded energy, vigour and drive, and impatient of formalities who even considered that the allocation of portfolios was merely meant to divide the departments among other Ministers, but inapplicable to him. I have a feeling that several of the lapses committed by him during the period when he held office, could have been avoided if the rules governing the several matters I shall presently mention were better drawn, and the observance of certain formalities made imperative. I am besides conscious of the fact that the temptations offered by political power are great and if one occupying the positions that the respondent did, were determined to do wrong and benefit himself and his family members at the expense of the State, as denoted by the spree which I have found the respondent indulged in between 1960 and 1963, nothing except the existence of political parties which not merely lay down codes of moral conduct but seriously enforce them and weed out of public life proved transgressors, an independent, honest and public-spirited civil service, a vigilant, virile and fearless press which

takes a non-partisan attitude as regards cleanliness in public life, and an informed, intelligent and alert public opinion could prevent or stop it.

36.7. But this does not mean that there might not be built-in safeguards against wrong-doing. In making this observation, I have in mind what I consider to be the several lacuna which facilitated some of the acts of the respondent which are the subject of the several charges, particularly those in which I have recorded findings against him.

36.8 I would first refer to the "Rules of Business"—

(1) Under the present set of rules, though normally no matter could be brought up before the Council of Ministers without a memorandum explaining the facts of the case and the resolution to be passed suggested being circulated among the Ministers, an exception is made whereby the Chief Minister might permit a matter being brought up without such a memorandum. I can well imagine cases of urgency, where immediate administrative action is necessary and which under the rules would require Cabinet sanction. On the language of the rule as it stands, the exception is rather vague and much too flexible. If the rule stated with precision the cases in which this deviation from the normal practice might take place, it would tend to prevent its abuse. When suggesting this, I have in mind a case like what happened in the case of the lease to Ghulam Jeelani at the meeting of the Cabinet on 29th December, 1960 (in Allegation 9). The subject of this lease was not on the agenda, there was no memorandum in relation to it and there could be none for the application was still in the process of being considered in the Secretariat and yet the Cabinet sanctioned it as if it were a part of the subject of the lease of Nedous, which it was not. Certainly there was no urgency in the granting of that application, and if there were a rule on the lines I have indicated, the subject could not have been brought up and decided.

(2) Though the existing Rules of Business do require that every matter which has financial implications, as touching the revenues or properties of the State, should pass through the Finance Department, the ease with which this scrutiny has been avoided has in my opinion contributed to the facility with which favours have been shown to the relations of the respondent. To remedy this situation, I would suggest the following :—

- (i) When any Secretary or Minister suggests that though a matter is required by the rules to obtain the concurrence of the Finance Department, still the file or proposal need not be circulated to it, he should be required to record his reasons, why he suggests a deviation from the normal. Sometimes it is said that the Finance Department signifies and symbolises "red-tape" and that to cut it would be salutary, but I am not of those who share this opinion. Though too much of red-tape is a drag on speed and even efficiency, some

amount of objective and detailed examination and scrutiny is desirable and necessary before decisions having financial implications involving loss to Government or gain to parties is taken. A distinction should be drawn between the delay entailed by mature consideration which is needed to lay down a policy or to take a decision, and formalities that impede the implementation of the policy or decision. While the former is desirable and necessary it is the latter that should be cut down.

- (ii) Every memorandum prepared for the Cabinet which contains proposals, which under the rules are required to obtain the concurrence of the Finance Department, but in regard to which there has been no circulation to that Department to ascertain its views, should be required to state specifically, this fact, together with the reasons why it has not been considered necessary to obtain the views of the Finance Department.

(3) I do not consider the rule regarding the concurrence of the Finance Minister at the Cabinet meeting as being a substitute for circulation to the Finance Department as it exists now, to be a well considered one. In the first place, it is not fair and I should say it would be embarrassing for a Finance Minister to be asked to express some opinion on the spur of the moment for this opinion could not be a reasoned one after due deliberation. Secondly, he is not likely to have the materials before him for a critical examination of the question. Hence, it would really be unfair to ask for his assent at the Council meeting without a preliminary examination by his Department. Lastly, it might be that the Minister in charge of the Department which puts up the proposal also holds the Finance portfolio. Unless, therefore, the matter is trivial, I would suggest that the memoranda which specify that Finance has not been consulted and set out the reasons why this has not been done, should be circulated to the Finance Secretary along with the relevant files at least a week or ten days before the meeting to enable the Secretary to brief the Finance Minister with the implications of the proposal, so that he could make up his mind as to his attitude at the Cabinet meeting.

Among the charges which have been inquired into in several cases the Finance Department has been bypassed, and it looks as if it was for no reason other than that if the department had been consulted, matters or circumstances would have been brought out which would not have been very convenient. I have in mind the files that show the antecedent process that transpired before the grant of the lease which is the subject of Allegation 10 and the persistence with which Mr. Mahajan directed the bypassing of the Finance Department. In this connection, I cannot refrain from mentioning that when the proposals of Mr. Nag, Secretary in the Forest Department for the grant of relief to forest lessees (in Allegations 29 and 31) were forwarded to the Finance Department, the latter though they had to accept his facts because they had

no alternative still cut down the relief suggested by 20% which having regard to the enormous amounts involved (the amount involved a remission of royalty of the order of nearly Rs. 1 crore, meant on the whole a substantial saving for the State.

(4) Lastly, and I do not know how far it would be useful, but I consider it worth trying that there should be a convention by which Ministers, whether their assent is sought to be obtained by circulation or at Cabinet meetings, should in cases where the proposals before them are calculated to benefit themselves or their close relatives (who these are might again be the subject of the convention) should declare to their colleagues, about their interest and the details of the nature of such an interest and not participate in the discussion and that this should be recorded in the proceedings of the Cabinet meeting. If there had been such a convention and it had been observed, some or at least most of the improprieties charged against the respondent might not have come about. I have in mind provisions in the lines of those in the Companies Act, under which Directors have to declare their interest in decision taken by him and have to appraise shareholders of the nature of their interest before the latter are called on to sanction their proposals. As the proceedings of the Cabinet would be confidential, there could be no objection on the score of undesirable publicity. But it would have the advantage of the rest of the members of the Cabinet knowing what they are deciding and its effect. I have a feeling that in some at least of the Cabinet decisions by which financial advantages were secured for the relations of the respondent, the other Ministers might not have known of the respondent's interest with the result that the examination and scrutiny which they might possibly have bestowed on the proposal was not forthcoming. I have besides the hope that if the interest of any particular Minister in the matter before the Cabinet was known to everyone, the chances of any impropriety being committed would be very minimal even if it were not entirely eliminated.

36.9. It would be seen from an examination of the charges that the main departments or transactions in which improprieties are seen to have been committed, are—

- (1) The Transport Department.
- (2) The Forest Department.
- (3) In supplies to or purchases by Government Departments.
- (4) The Revenue or Nazul Department regarding grants of land for commercial purposes.
- (5) The administration of the proviso to section 20 of the Big Landed Estates Abolition Act, 1950.

36.10. (1) *Transport Department* : Taking first the Transport Department, while dealing with the charge in Allegation 19, I have had occasion to examine in great detail the manner the Department has functioned during the Prime Ministership of the respondent. I have

there pointed out that the salutary provisions of the licensing provisions of the Motor Vehicles Act had been entirely subverted, and in its place permits had been granted as a measure designed for the relief of poverty, as a grant-in-aid to charitable or social organisations or as a reward for political service or for past service to political parties, besides of course being freely available to the favoured ones. This accompanied by withholding permits to those who needed them either for their own trade or for transporting goods for the public, not for any reason connected with their conduct or misconduct in the transport field, or their ability to render service to the public in cases of public carrier permits, not on the ground that the number of vehicles on the road was sufficient to meet the demands of the economy, not for the reason that the roads were not able to bear the traffic by the extra number of vehicles but on the ground that the applicants did not satisfy wholly irrelevant standards, has been in my opinion responsible for the extraordinary profits made by the relations referred to in Allegations 19 and 27.

This can be remedied only if there were strict observance of the statutory provisions, and the Transport Controller, the authority vested with power to issue permits, be treated as independent and quasi-judicial. I have no information before me as to the changes in the administration of the Motor Vehicles Act and in the grant of permits which have been made by the successor Government. I am, however, making the suggestions which follow on the basis of the situation which obtained during the term of office of the respondent as Prime Minister.

There should be a traffic survey, for determining the quantum of load to be carried from station to station by way of passengers as well as of goods. The Transport Authority should thereafter determine the number of vehicles needed for this load, and taking into consideration the conditions of the road and other factors, should call for applications from those who possess or own motor vehicles, specifying the number of public carrier and stage carrier permits that would be granted for each specified route. Provided there was nothing against an applicant, judged by the criterion of providing an efficient transport service, permits could be granted to all applicants. If there are more applicants than the number of permits to be issued, there should be a screening and evaluation among the several applicants to determine the person who could render the best service to the public. If it is desired to encourage cooperatives, or particular classes of operators such as driver-owners, they might be given preference, other conditions being equal, like having facilities for repairs, spare vehicles to be run in the event of a breakdown etc. Every effort should be made to ensure that there is no trafficking in permits. If the State intends to enter more effectively and more extensively in the transport field, this could be done and what I have suggested would not impede such a programme. I expect that if the transport system were properly organised on the lines I have indicated, the State's economy which depends on rapid and effective movement of goods at reasonable rates within the State as well as from and to it, would greatly improve and might have a steadying effect on the price levels of every commodity which would not be either unduly low because of excessive stocks not being cleared, or unduly high because of delay in replenishment.

36.11. (2) Forest Department : The model form of contracts with contractors is not properly drawn and would have to be revised, taking particular care to delete those which are not intended to be enforced. The effect of having these in the forms, permits the possibility of their being used against some, but not generally against others, thus giving room for discrimination. The marking system of trees as fit and unfit is capable of being improved and the published marking lists on which tenders are being invited, might contain the information regarding the condition regarding trees marked as "fit" which are found in the Forest Department's books. I have, while discussing the examination of random samples by the Forest Commission of the Compartment 27-Budnambal, had occasion to observe the details about the trees which are not set out in the printed lists which are circulated to intending lessees. Apart from natural calamities like flood, fire or earthquake, enemy action etc., there should not be any remission or rebate allowed. But what these are and the principles on which relief would be afforded should be specified in the contracts.

The principle on which Mr. Nag rejected the suggestion of Mr. Firdous to allow a rebate on the royalty for what he termed "high", "uneconomic" and "erratic bids", appears to me to be sound. Logically, however, this would mean that there should be no rebate for rot as well, apart from the fact that the non-availability of any remission on this account is one of the conditions of the contract. I can appreciate a bid being rejected on the ground of its being unduly high, or a ceiling being imposed on the amount of the bid based upon the market price of the yield from the compartment and a selection of the best among those who were willing to take it for the amount fixed as the maximum, but I consider that when once a lease has been taken, there should be no rebates granted on compassionate grounds, not falling within those I have specified earlier. Even if for any reason rebates are inevitable, the discretionary element for ascertaining whether there should be and if so the amount of rebate, should be reduced to a minimum, by clearly worded rules which provide the guide lines on which such rebates would be granted. Having regard to the nature of their duties, it might not be possible to eliminate all corruption and favouritism among the lower officials, but if at the highest level there were strictness, I am confident honesty can be achieved.

36.12. (3) Purchases by Government Departments : The terms on which supplies of goods to any Department should be specified in model forms of contract for each Department, and if any variation is necessitated by the exigencies of a particular situation, the matter should not, if the amount involved be above a particular figure, say rupees ten or twenty thousand be given effect to without scrutiny and examination by the Finance Department. I am having in mind the advance of Rs. 33 lakhs to Fairdeal Motors, Sriragar in 1957 and Rs. 1 lakh to the same firm in 1961 (Allegations 16(c) and 24 respectively).

While on the topic of contracts entered into by Government or Government Departments, I should not fail to advert to the practice—which I have found to be extensive—of contracts being entered into with minors. Building contracts have been entered into with them and so)

have leases containing mutual covenants. Bakshi Abdul Rashid in the course of his reply to Allegation 12 has stated that the entering into such contracts is necessitated by the needs of the economy of the State. I have been unable to comprehend clearly what this meant, but the practice which appears to be widespread plainly ignores the provisions of the Jammu and Kashmir Contract Act which is in terms identical with the Indian Contract Act. I do not know whether the State has had occasion to enforce such contracts, with minors, but if they attempt it, they are certain to meet with legal difficulties. In the circumstances I would suggest that the Government refrain from entering into such contracts.

36.13. (4) Land Grants Act and Leases of State Land for Building purposes : I have while discussing the charge in Allegation 9 examined the provisions of the Land Grants Act and the Rules under it of 1960. I conceive the object of the enactment was to codify the law in relation to leases of Government land for building purposes, and to provide a single uniform law on the subject. The rules framed under it also proceed on that basis. But by an interpretation of its provisions, which I am constrained to remark is rather strained, the entire object of the legislation has been frustrated, and the Government have claimed to retain the same powers that they had before the Act and the rules. In other words they have proceeded on the footing that the Act and the rules had really made no difference to the law on the subject.

This is hardly a desirable state of affairs. If the Government desire to retain powers to relax the rules, they should do so by amending the rules, taking such powers. That would be proper and there could be no objection to that course. Only if they reserve a power to relax the rules, it should not be a blanket provision, but should specify the class of cases in which it could and would be done, and the conditions which would take the place of the rules in those cases. That would be fair to every one concerned, and could not very much give rise to charges of partiality or unequal treatment. In view of the legal difficulties I have pointed out, it would be in Government's interest to have the rules revised at an early date.

36.14. (5) Big Landed Estates Abolition Act, 1950 :—Next I come to the Big Landed Estates Abolition Act, 1950, and particularly to the proviso to section 20 which was introduced by an amendment in 1960. Though the Act confers on Government the power to make rules, this has not been exercised, so that notwithstanding that the proviso provides for matters which obviously involve an application by the tiller-owner and a processing and scrutiny of that application by the Revenue officials and the Minister, there is no procedure prescribed for any of these matters. Having regard to this history of this proviso, which came in about ten years after the tiller-owners obtained "ownership" rights in the lands they were cultivating, and the limitations imposed even now on the right of alienation, I believe I am right in thinking that the object of the legislation was to safeguard the interests of these tiller owners who are mostly illiterate, while at the same time making provision for relieving the shortage of urban housing accommodation. From this it follows that the procedure should aim at serving

with these purposes. So far as the tiller-owners are concerned, the procedure prescribed should be such that before the Minister grants permission, there is a proper enquiry regarding their real desire to sell and regarding the purpose of the buyer. To achieve this, it is necessary to frame rules, to carry out the purposes of the Act. These rules should provide (1) for the form of the application which should set out the name and description of the intending buyer, together with the price at which the property is proposed to be sold. (2) An enquiry by the officials of the Revenue Department of the tiller-applicant and of the intending buyer. (3) For an ascertainment and report by the officials of the buildings proposed to be erected on the land. (4) For ascertaining whether the purchaser is in a position to erect the buildings, having regard to his financial position, and the relevant building regulations, or whether the purchase is merely intended as a speculation in land. The rules might even prescribe a period within which the contemplated buildings should be erected. (5) For ascertaining whether the price fixed to be paid is reasonable and the Minister should grant permission to sell after he is satisfied on these points.

36.15. It will be realised that these sales involve the conversion of land which is being put to agricultural use, for building purpose. Therefore, care should be taken to ensure that the new purpose is fulfilled, and that land is purchased not for serving merely for agricultural purposes, for it would mean that the tiller-owner is replaced by a landlord which is against the policy of the Act or as additional vacant space to already extensive compounds of existing buildings as this serve no social purpose.

36.16. Finally, I desire to point out that this has been the first case of a full-fledged enquiry into charges of misconduct and abuse of official position to obtain financial advantages for himself and the members of his family against a Chief Minister or Minister of a State. I am aware that there have been inquiries conducted into certain allegations against Mr. K. D. Malaviya as a Central Minister, and against Mr. Pratap Singh Kairon, the Chief Minister of the Punjab. But the first was a summary inquiry into one particular allegation and was conducted in camera—the report even not being made public. In the other case, the charges had been made by certain members of the public and there had not been any prior investigation of those charges and the tribunal had to pronounce its findings on the basis of certain files which the Government of Mr. Kairon produced. In the present case, however, there has been a thorough preliminary investigation of the matters in relation to each charge by officers of the State Government and it is the result of that investigation that has been placed before the Commission. That is why I say that this is the first case of full-fledged inquiry.

For near a decade, there has been a growing feeling that corruption has been spreading, not merely among the permanent officials particularly in the lower cadres, but that political offices have been turned into sources for making private fortunes for those in office and their friends and relations. But this has most often been characterised as "character assassination" and that these assertions or rumours sprang out of a sense of envy or disappointment felt by those who were

kept out of such offices, or worse still out of rancour on the part of political opponents to smear their reputations and thus pull down their rivals from power. Very possibly there is truth in both. Committees have considered the solution to these problems and have suggested procedures for ascertaining the truth, and these suggestions have been the subject of diverse comments among those who are interested in maintaining purity in public life while at the same time avoiding the dangers to the reputation of the innocent whom their enemies seek to besmirch. I do not propose to enter into this controversy, mainly for the reason that it is outside the scope of my assignment. But having embarked on a full scale inquiry in which charges of misconduct and corruption in a public office have been made, I considered that I would be failing in my duty, if I did not patiently and meticulously examine every piece of evidence—for or against—taking care to omit no document or aspect of a document which might throw light on the case of either side, and give proof of my having done so, before recording my finding on the several charges. Besides, I thought that it would be in public interest if by going into these details I brought out the manner in which the improprieties were committed and the machinery employed to put through schemes for self-aggrandisement or favouritism. Some of them are no doubt ingenious, but several are really clumsy as they involve apparent manipulations and alterations which are clearly seen in documents to achieve their purpose.

36.18. In this connection, my analysis of the evidence would serve to show how when abuse starts from the top, demoralisation sets in the permanent services, and even officers who by virtue of their status and position could normally be expected to take an objective view of matters coming up before them, succumb to the temptation of becoming subservient and willing tools for furthering the interests of those under whom they serve. If this detailed examination would by bringing into public view the methods adopted to secure undue financial advantages, serve at least in some measure to diminish even if it does not eliminate improprieties in public life, the trouble I have taken would have been worthwhile, and I would have achieved my purpose.

THE END

